

State Law Library of Montana
MONTANA LEGISLATIVE HISTORY

Chapter 565 Session L 1995
Bill House _____ Senate 224

History and final status sheet X
Introduced bill X
Fiscal note NA
Third reading bill X
Final version of bill X

House Committee on Business & Labor

Hearing date(s)* 3-8 3-9
 3-14 _____

Executive action (vote) date(s)* 3-14

Comm. Report 3-15

Floor 2nd reading & vote 3-24;4-12

Floor 3rd reading & vote 3-25;4-13

Senate Committee on Business & Industry

Hearing date(s)* 2-1 2-7

Executive action (vote) date(s)* 2-7

Comm. Report 2-7

Floor 2nd reading & vote 2-8;4-1;4-11

Floor 3rd reading & vote 2-9;4-3,12

Conference or Free Conference Comm. _____ Yes X No

Hearing date(s)* _____

Executive action (vote) date(s)* _____

* Includes minutes, exhibits, roll call, visitors register, and vote sheet if available.

Did this bill originate in an interim committee? _____ Yes X No

Committee _____ Report _____

NOTES: Define Relationships Available Between Real Estate Brokers or
Salespersons and Buyers or Sellers in Real Estate Transactions



Compiled by: rg

Date: 4-1-2016

SB 224 INTRODUCED BY CHRISTIAENS, ET AL.
 DEFINE RELATIONSHIPS AVAILABLE BETWEEN REAL ESTATE BROKERS
 OR SALESPERSONS AND BUYERS OR SELLERS IN REAL ESTATE
 TRANSACTIONS

1/23	INTRODUCED		
1/23	FIRST READING		
1/23	REFERRED TO BUSINESS & INDUSTRY		
2/01	HEARING		
2/07	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/08	2ND READING PASSED	49	0
2/09	3RD READING PASSED	49	0
	TRANSMITTED TO HOUSE		
2/10	FIRST READING		
2/15	REFERRED TO BUSINESS & LABOR		
3/08	HEARING		
3/16	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/24	2ND READING CONCURRED	95	1
3/25	3RD READING CONCURRED	98	0
	RETURNED TO SENATE WITH AMENDMENTS		
4/01	2ND READING AMENDMENTS CONCURRED	46	0
4/03	3RD READING AMENDMENTS CONCURRED	45	0
4/08	SIGNED BY PRESIDENT		
4/08	SIGNED BY SPEAKER		
4/10	TRANSMITTED TO GOVERNOR		
	RETURNED TO SENATE WITH GOVERNOR'S PROPOSED AMENDMENTS		
4/11	2ND READING GOVERNOR'S AMENDMENTS CONCURRED	50	0
4/12	3RD READING GOVERNOR'S AMENDMENTS CONCURRED	49	0
	HOUSE		
4/12	2ND READING GOVERNOR'S AMENDMENTS CONCURRED	95	3
4/13	3RD READING GOVERNOR'S AMENDMENTS CONCURRED	100	0
4/18	SIGNED BY PRESIDENT		
4/18	SIGNED BY SPEAKER		
4/18	TRANSMITTED TO GOVERNOR		
4/26	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 565		
	EFFECTIVE DATE: 10/01/95		

SB 225 INTRODUCED BY TOEWS, ET AL.
 REQUIRE SALE OF CERTAIN STATE LANDS IN DANIELS, VALLEY,
 GARFIELD, AND PHILLIPS COUNTIES

1/23	INTRODUCED		
1/23	FIRST READING		
1/23	REFERRED TO NATURAL RESOURCES		
1/24	FISCAL NOTE REQUESTED		
1/30	FISCAL NOTE RECEIVED		
1/31	FISCAL NOTE PRINTED		
2/06	HEARING		
2/16	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/17	2ND READING PASSED	28	22
2/18	3RD READING PASSED	27	23
	TRANSMITTED TO HOUSE		
2/20	FIRST READING		
2/20	REFERRED TO NATURAL RESOURCES		

SENATE BILL NO. 224

INTRODUCED BY

A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING THE RELATIONSHIPS AVAILABLE BETWEEN REAL ESTATE BROKERS OR SALESPERSONS AND BUYERS OR SELLERS IN REAL ESTATE TRANSACTIONS;

ESTABLISHING THE OBLIGATIONS OWED BY REAL ESTATE BROKERS OR SALESPERSONS TO BUYERS OR SELLERS IN REAL ESTATE TRANSACTIONS; REQUIRING REAL ESTATE BROKERS AND SALESPERSONS TO PROVIDE BUYERS AND SELLERS WITH AGENCY DISCLOSURE STATEMENTS REGARDING AGENCY RELATIONSHIPS BETWEEN REAL ESTATE BROKERS OR SALESPERSONS AND BUYERS OR SELLERS IN A REAL ESTATE TRANSACTION; AND AMENDING SECTIONS 37-51-102 AND 37-51-321, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 37-51-102, MCA, is amended to read:

"37-51-102. **Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Account" means the real estate recovery account established in 37-51-501.

(2) (a) "Adverse material fact" means a fact that should be recognized by a broker or salesperson as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property and may be a fact that:

(i) materially affects the value, affects structural integrity, or presents a documented health risk to occupants of the property; or

(ii) materially affects the buyer's ability or intent to perform the buyer's obligations under a proposed or existing contract.

(b) The term does not include the fact that an occupant of the property has or has had AIDS or another communicable disease or that the property was the site of a suicide or felony.

(3) "Board" means the board of realty regulation provided for in 2-15-1867.

(4) "Broker" includes an individual who:

(a) for another or for valuable consideration or who with the intent or expectation of receiving

1 valuable consideration negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange, or
2 lease of real estate or of the improvements on real estate or collects rents or attempts to collect rents;

3 (b) is employed by or on behalf of the owner or lessor of real estate to conduct the sale, leasing
4 subleasing, or other disposition of real estate for consideration;

5 (c) engages in the business of charging an advance fee or contracting for collection of a fee in
6 connection with a contract by which the individual undertakes primarily to promote the sale, lease, or other
7 disposition of real estate in this state through its listing in a publication issued primarily for this purpose or
8 for referral of information concerning real estate to brokers;

9 (d) makes the advertising, sale, lease, or other real estate information available by public display
10 to potential buyers and who aids, attempts, or offers to aid, for a fee, any person in locating or obtaining
11 any real estate for purchase or lease;

12 (e) aids or attempts or offers to aid, for a fee, any person in locating or obtaining any real estate
13 for purchase or lease;

14 (f) receives a fee, commission, or other compensation for referring to a licensed broker or ~~salesman~~
15 salesperson the name of a prospective buyer or seller of real property; or

16 (g) advertises or represents to the public that the individual is engaged in any of the activities
17 referred to in subsections ~~(3)(a)~~ (4)(a) through ~~(3)(f)~~ (4)(f).

18 ~~(4)(5)~~ "Broker associate" means a broker who associates, as an employee or independent
19 contractor, with a broker owner and does not own an interest in a real estate firm.

20 ~~(5)(6)~~ "Broker owner" means a broker who owns or has a financial interest in a real estate firm.

21 (7) "Buyer" means a person who is interested in acquiring an ownership interest in real property
22 or who has entered into an agreement to acquire an interest in real property. The term includes tenants
23 or potential tenants with respect to leases or rental agreements of real property.

24 (8) "Buyer agent" means a broker or salesperson who, pursuant to a written buyer broker
25 agreement, is acting as the agent of the buyer in a real estate transaction and includes a buyer subagent
26 and an in-house buyer agent designate.

27 (9) "Buyer broker agreement" means a written agreement in which a prospective buyer employs
28 a broker to locate real estate of the type and with terms and conditions as designated in the written
29 agreement.

30 (10) "Buyer subagent" means a broker or salesperson who, pursuant to an offer of a subagency,

1 acts as the agent of a buyer.

2 ~~(6)~~(11) "Department" means the department of commerce provided for in Title 2, chapter 15, part
3 18.

4 (12) "Dual agent" means a broker or salesperson who, pursuant to a written listing agreement or
5 buyer broker agreement or as a buyer or seller subagent, acts as the agent of both the buyer and seller with
6 written authorization as provided in [section 4]. An in-house buyer or seller agent designate may not be
7 considered a dual agent.

8 ~~(7)~~(13) "Franchise agreement" means a contract or agreement by which:

9 (a) a franchisee is granted the right to engage in business under a marketing plan prescribed in
10 substantial part by the franchisor;

11 (b) the operation of the franchisee's business is substantially associated with the franchisor's
12 trademark, trade name, logotype, or other commercial symbol or advertising designating the franchisor; and

13 (c) the franchisee is required to pay, directly or indirectly, a fee for the right to operate under the
14 agreement.

15 (14) "In-house buyer agent designate" means a broker associate or salesperson employed by or
16 associated as an independent contractor with a broker owner and designated by the broker owner as the
17 exclusive agent for a buyer for a designated transaction and who may not be considered to be acting for
18 other than the buyer with respect to the designated transaction.

19 (15) "In-house seller agent designate" means a broker associate or salesperson employed by or
20 associated as an independent contractor with a broker owner and designated by the broker owner as the
21 exclusive agent for a seller for a designated transaction and who may not be considered to be acting for
22 other than the seller with respect to the designated transaction.

23 (16) "Listing agreement" means a written agreement between a seller and broker for the sale of
24 real estate, with the terms and conditions set out in the agreement.

25 (17) "Negotiations" means:

26 (a) efforts to act as an intermediary between parties to a real estate transaction;

27 (b) facilitating and participating in contract discussions;

28 (c) completing forms for offers, counteroffers, addendums, and other writings; and

29 (d) presenting offers and counteroffers.

30 ~~(8)~~(18) "Person" includes individuals, partnerships, associations, and corporations, foreign and

domestic, except that when referring to a person licensed under this chapter, it means an individual.

~~(9)~~(19) "Property manager" includes a person who for a salary, commission, or compensation of any kind engages in the business of leasing, renting, subleasing, or other transfer of possession of real estate belonging to others without transfer of the title to the property, pursuant to 37-51-601 and 37-51-602.

~~(10)~~(20) "Real estate" includes leaseholds as well as any other interest or estate in land, whether corporeal, incorporeal, freehold, or nonfreehold and whether the real estate is situated in this state or elsewhere.

(21) "Real estate transaction" means the sale, exchange, or lease or grant of an option for the sale, exchange, or lease of an interest in real estate and includes all communication, interposition, advisement, negotiation, and contract development and closing.

~~(11)~~(22) "~~Salesman~~" "Salesperson" includes an individual who for a salary, commission, or compensation of any kind is associated, either directly, indirectly, regularly, or occasionally, with a real estate broker to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate.

(23) "Seller" means a person who has entered into a listing agreement to sell real estate and includes landlords who have an interest in or are a party to a lease or rental agreement.

(24) "Seller agent" means a broker or salesperson who, pursuant to a written listing agreement, acts as the agent of a seller and includes a seller subagent and an in-house seller agent designate.

(25) "Seller subagent" means a broker or salesperson who, pursuant to an offer of a subagency, acts as the agent of a seller.

(26)(a) "Statutory broker" means a broker or salesperson who assists one or more parties to a real estate transaction without acting as an agent or representative of any party to the real estate transaction.

(b) A broker or salesperson is presumed to be acting as a statutory broker unless the broker or salesperson has entered into a listing agreement with a seller or a buyer broker agreement with a buyer or has disclosed, as required in this chapter, a relationship other than that of a statutory broker."

Section 2. Section 37-51-321, MCA, is amended to read:

"37-51-321. Revocation or suspension of license -- initiation of proceedings -- grounds. (1) The board may on its own motion and shall on the sworn complaint in writing of a person investigate the actions of a real estate broker or a real estate salesperson, subject to 37-1-101 and 37-1-121, and may

1 revoke or suspend a license issued under this chapter when the broker or salesperson has been found guilty
2 by a majority of the board of any of the following practices:

3 (a) intentionally misleading, untruthful, or inaccurate advertising, whether printed or by radio,
4 display, or other nature, which advertising in any material particular or in any material way misrepresents
5 any property, terms, values, policies, or services of the business conducted. A broker who operates under
6 a franchise agreement engages in misleading, untruthful, or inaccurate advertising if in using the franchise
7 name, the broker does not incorporate the broker's own name in the franchise name or logotype or does
8 not conspicuously display, on the broker's letterhead and other printed materials available to the public, a
9 statement that the broker's office is independently owned and operated and the trade name, if any, by
10 which the office is known. The board may not adopt advertising standards more stringent than those set
11 forth in this subsection.

12 (b) making any false promises of a character likely to influence, persuade, or induce;

13 (c) pursuing a continued and flagrant course of misrepresentation or making false promises through
14 agents or salespersons or any medium of advertising or otherwise;

15 (d) use of the term "realtor" by a person not authorized to do so or using another trade name or
16 insignia of membership in a real estate organization of which the licensee is not a member;

17 (e) failing to account for or to remit money coming into the broker's or salesperson's possession
18 belonging to others;

19 (f) accepting, giving, or charging an undisclosed commission, rebate, or profit on expenditures
20 made for a principal;

21 (g) acting in a dual capacity of broker and undisclosed principal in a transaction, including failing
22 to disclose in advertisements for real property the person's dual capacity as broker and principal;

23 (h) guaranteeing, authorizing, or permitting a person to guarantee future profits ~~which~~ that may
24 result from the resale of real property;

25 (i) offering real property for sale or lease without the knowledge and consent of the owner or the
26 owner's authorized agent or on terms other than those authorized by the owner or the owner's authorized
27 agent;

28 (j) inducing a party to a contract of sale or lease to break the contract for the purpose of
29 substituting a new contract with another principal;

30 (k) accepting employment or compensation for appraising real property contingent on the reporting

1 of a predetermined value or issuing an appraisal report on real property in which the broker or salesperson
2 has an undisclosed interest;

3 (l) negotiating a sale, exchange, or lease of real property directly with ~~an owner or lessee~~ a seller
4 or buyer if the broker or salesperson knows that the ~~owner~~ seller or buyer has a written, outstanding
5 ~~contract~~ listing agreement or buyer broker agreement in connection with the property granting an exclusive
6 agency to another broker;

7 (m) soliciting, selling, or offering for sale real property by conducting lotteries for the purpose of
8 influencing a purchaser or prospective purchaser of real property;

9 (n) representing or attempting to represent a real estate broker other than the employer without
10 the express knowledge or consent of the employer;

11 (o) failing voluntarily to furnish a copy of a written instrument to a party executing it at the time
12 of its execution;

13 (p) paying a commission in connection with a real estate sale or transaction to a person who is not
14 licensed as a real estate broker or real estate salesperson under this chapter;

15 (q) intentionally violating a rule adopted by the board in the interests of the public and in conformity
16 with this chapter;

17 (r) failing, if a salesperson, to place, as soon after receipt as is practicably possible, in the custody
18 of the salesperson's registered broker, deposit money or other money entrusted to the salesperson in that
19 capacity by a person;

20 (s) demonstrating unworthiness or incompetency to act as a broker or salesperson; or

21 (t) conviction of a felony.

22 (2) (a) It is unlawful for a broker or salesperson to openly advertise property belonging to others,
23 whether by means of printed material, radio, television, or display or by other means, unless the broker or
24 salesperson has a signed listing agreement from the owner of the property. The listing agreement must be
25 valid as of the date of advertisement.

26 (b) The provisions of subsection (2)(a) do not prevent a broker or salesperson from including
27 information on properties listed by other brokers or salespersons who will cooperate with the selling broker
28 or salesperson in materials dispensed to prospective customers.

29 (c) The license of a broker or salesperson who violates this subsection (2) may be suspended or
30 revoked as provided in subsection (1)."

1 **NEW SECTION. Section 3. Duties, duration, and termination of relationship between broker or**
2 **salesperson and buyer or seller.** (1) The provisions of this chapter and the duties described in this section
3 govern the relationships between brokers or salespersons and buyers or sellers and are intended to replace
4 the common law as applied to these relationships. The duties of a broker or salesperson vary depending
5 upon the relationship with a party to a real estate transaction and are as provided in this section.

6 (2) A seller's agent is obligated to the seller to:

7 (a) act solely in the best interests of the seller;

8 (b) obey promptly and efficiently all lawful instructions of the seller;

9 (c) disclose all relevant information that concerns the real estate transaction and that is known to
10 the seller's agent and not known or discoverable by the seller, unless the information is subject to
11 confidentiality arising from a prior or existing agency relationship on the part of the seller's agent;

12 (d) safeguard the seller's confidences;

13 (e) exercise reasonable care, skill, and diligence in pursuing the seller's objectives and in complying
14 with the terms established in the listing agreement;

15 (f) fully account to the seller for any funds or property of the seller that comes into the seller's
16 agent's possession; and

17 (g) comply with all applicable federal and state laws, rules, and regulations.

18 (3) A seller's agent is obligated to the buyer to:

19 (a) disclose to a buyer or the buyer's agent any adverse material facts that concern the property
20 and that are known to the seller's agent, except that the seller's agent is not required to inspect the
21 property or verify any statements made by the seller;

22 (b) act in good faith with a buyer and a buyer's agent; and

23 (c) comply with all applicable federal and state laws, rules, and regulations.

24 (4) A buyer's agent is obligated to the buyer to:

25 (a) act solely in the best interests of the buyer;

26 (b) obey promptly and efficiently all lawful instructions of the buyer;

27 (c) disclose all relevant information that concerns the real estate transaction and that is known to
28 the buyer's agent and not known or discoverable by the buyer, unless the information is subject to
29 confidentiality arising from a prior or existing agency relationship on the part of the buyer's agent;

30 (d) safeguard the buyer's confidences;

(e) exercise reasonable care, skill, and diligence in pursuing the buyer's objectives and in complying with the terms established in the buyer broker agreement;

(f) fully account to the buyer for any funds or property of the buyer that comes into the buyer's agent's possession; and

(g) comply with all applicable federal and state laws, rules and regulations.

(5) A buyer's agent is obligated to the seller to:

(a) disclose any adverse material facts that are known to the buyer's agent and that concern the ability of the buyer to perform on any purchase offer;

(b) act in good faith with a seller and a seller's agent; and

(c) comply with all applicable federal and state laws, rules, and regulations.

(6) A statutory broker is not the agent of the buyer or seller but nevertheless is obligated to them to:

(a) disclose to:

(i) a buyer or a buyer's agent any adverse material facts that concern the property and that are known to the statutory broker, except that the statutory broker is not required to inspect the property or verify any statements made by the seller;

(ii) a seller or a seller's agent any adverse material facts that are known to the statutory broker and that concern the ability of the buyer to perform on any purchase offer;

(b) exercise reasonable care, skill, and diligence putting together a real estate transaction; and

(c) comply with all applicable federal and state laws, rules, and regulations.

(7) A dual agent is obligated to a seller in the same manner as a seller's agent and is obligated to a buyer in the same manner as a buyer's agent under this section, except as follows:

(a) a dual agent has a duty to disclose to a buyer or seller any adverse material facts that are known to the dual agent, regardless of any confidentiality considerations; and

(b) a dual agent may not disclose the following information without the written consent of the person to whom the information is confidential:

(i) the fact that the buyer is willing to pay more than the offered purchase price;

(ii) the fact that the seller is willing to accept less than the purchase price that the seller is asking for the property;

(iii) factors motivating either party to buy or sell; and

(iv) any information that a party indicates in writing to the dual agent is to be kept confidential.

(8)(a) The agency relationship of a buyer agent, seller agent, or dual agent continues until the earliest of the following dates:

(i) completion of performance by the agent;

(ii) the expiration date agreed to in the listing agreement or buyer broker agreement; or

(iii) the occurrence of any authorized termination of the listing agreement or buyer broker agreement.

(b) A statutory broker's relationship continues until the completion, termination, or abandonment of the real estate transaction giving rise to the relationship.

(9) Upon termination of an agency relationship, a broker or salesperson does not have any further duties to the principal, except as follows:

(a) to account for all money and property of the principal;

(b) to keep confidential all information received during the course of the agency relationship that was made confidential at the principal's direction, except for:

(i) subsequent conduct by the principal that authorizes disclosure;

(ii) disclosure required by law or to prevent the commission of a crime;

(iii) the information being disclosed by someone other than the broker or salesperson; and

(iv) the disclosure of the information being reasonably necessary to defend the conduct of the broker or salesperson, including employees, independent contractors, and subagents.

NEW SECTION. Section 4. Relationship disclosure requirements. (1) A broker or salesperson shall disclose the existence and nature of relevant agency or other relationships to the parties to a real estate transaction as provided in this section.

(2) A seller agent shall make the required relationship disclosures:

(a) to the seller at the time the listing agreement is executed or, if the seller agent is acting as a seller subagent, at the time negotiations commence; and

(b) to the buyer or buyer agent at the time negotiations commence.

(3) A buyer agent shall make the required relationship disclosures:

(a) to the buyer at the time the buyer broker agreement is executed or, if the buyer agent is acting as a buyer subagent, at the time negotiations commence; and

1 (b) to the seller or seller agent at the time negotiations commence.

2 (4) A statutory broker shall make the required relationship disclosure to the buyer and seller at the
3 time negotiations commence.

4 (5) A buyer agent or seller agent who subsequently becomes a dual agent shall disclose the
5 relationship to the buyer and seller and receive their consent prior to the time or at the time that the dual
6 agency arises.

7 (6) A disclosure required by this section must be signed and dated by the party to whom the
8 disclosure is directed and by the broker or salesperson. A disclosure must contain substantially the
9 following information:

10 (a) Seller agent disclosure to the seller: "(Name of seller agent) will be representing you as your
11 agent or subagent in the sale of your property located at (address of property). Your seller agent is
12 obligated to you as enumerated below. If your seller agent is also representing a buyer who becomes
13 interested in your property, a dual agency may be created. In a dual agency relationship, the seller agent
14 is obligated to the buyer in the same way as to you. This conflict will prohibit the seller agent from
15 advocating exclusively on your behalf or the buyer's behalf and may limit the level of representation you
16 receive. If the potential for a dual agency arises, the seller agent shall provide you with a dual agent
17 disclosure. A seller agent cannot act as a dual agent without your consent and that of the buyer. This
18 consent is given by you and the buyer signing the dual agent disclosure. If you or the buyer declines to
19 give this consent, your opportunity to sell your property to that buyer may be lost.

20 Your seller agent is obligated to you as follows:

21 (1) to act solely in the best interests of the seller to the exclusion of all other interests, including
22 those of the seller agent;

23 (2) to obey promptly and efficiently all lawful instructions of the seller;

24 (3) to disclose to the seller all relevant and material information that concerns the real estate
25 transaction and that is known by the seller agent and not known by the seller, unless the information is
26 subject to confidentiality arising from a prior or existing agency relationship;

27 (4) to safeguard the seller's confidences;

28 (5) to exercise reasonable skill, care, and diligence in pursuing the seller's objectives as established
29 in the listing agreement;

30 (6) to fully account to the seller for all funds or property of the seller coming into the seller agent's

1 possession;

2 (7) to comply with all applicable federal and state laws, rules, and regulations; and

3 (8) to carry out the terms of the listing agreement."

4 (b) Seller agent disclosure to the buyer: "(Name of seller agent) is the agent of the seller with
5 respect to the seller's property located at (address of property). Although the seller agent is primarily
6 obligated to the seller, the seller agent is obligated to you as specified below.

7 A seller agent is obligated to a buyer as follows:

8 (1) to disclose to a buyer any adverse material facts that concern the property and that are known
9 to the seller agent;

10 (2) to deal in good faith with the buyer; and

11 (3) to comply with all applicable federal and state laws, rules, and regulations.

12 "Adverse material fact" means a fact that should be recognized by a broker as being of enough
13 significance as to affect a person's decision to enter into a contract to buy or sell real property and may
14 be a fact that materially affects the value or structural integrity or presents a documented health risk to
15 occupants of the property. The term may not include the fact that an occupant of the property has or has
16 had AIDS or another communicable disease or that the property was the site of a suicide or felony."

17 (c) Buyer agent disclosure to the buyer: "(Name of buyer agent) will be representing you as your
18 agent or subagent in the purchase of real property of the nature described in the buyer broker agreement.
19 Your buyer agent is obligated to you as enumerated below. If your buyer agent is also representing a seller
20 of property that you become interested in, a dual agency may be created. In a dual agency relationship,
21 the buyer agent is obligated to the seller in the same way as to you. This conflict will prohibit the buyer
22 agent from advocating exclusively on your behalf or on the seller's behalf and may limit the level of
23 representation you receive. If the potential for a dual agency arises, the buyer agent shall provide you with
24 a dual agent disclosure. A buyer agent cannot act as a dual agent without your consent and that of the
25 seller. This consent is given by you and the seller signing the dual agent disclosure. If you or the seller
26 declines to give this consent, your opportunity to acquire the seller's property may be lost.

27 Your buyer agent is obligated to you as follows:

28 (1) to act solely in the best interests of the buyer to the exclusion of all other interests, including
29 those of the buyer agent;

30 (2) to obey promptly and efficiently all lawful instructions of the buyer;

(3) to disclose to the buyer all relevant and material information that concerns the real estate transaction and that is known by the buyer agent and not known by the buyer, unless the information is subject to confidentiality arising from a prior or existing agency relationship;

(4) to safeguard the buyer's confidences;

(5) to exercise reasonable skill, care, and diligence in pursuing the buyer's objectives as established in the buyer broker agreement;

(6) to fully account to the buyer for all funds or property of the buyer coming into the buyer agent's possession;

(7) to comply with all applicable federal and state laws, rules, and regulations; and

(8) to carry out the terms of the buyer broker agreement."

(d) Buyer agent disclosure to the seller: "(Name of buyer agent) is representing the buyer with respect to the seller's property located at (address of property). Although the buyer agent is primarily obligated to the buyer, the buyer agent is obligated to you as specified below.

A buyer agent is obligated to a seller as follows:

(i) to disclose to a seller any adverse material facts that concern the property and that are known to the buyer agent;

(ii) to deal in good faith with the seller; and

(iii) to comply with all applicable federal and state laws, rules, and regulations.

"Adverse material fact" means a fact that should be recognized by a broker as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property and may be a fact that materially affects the buyer's ability or intent to perform the buyer's obligations under a proposed or existing contract."

(e) Statutory agent disclosure to the buyer and seller: "(Name of statutory broker) will be involved as a statutory broker with respect to the purchase and sale of real property located at (address). A statutory broker is not the agent of the buyer or seller but is only assisting the parties in executing a sale of the property. A statutory broker is obligated to the buyer and seller as specified below.

A statutory broker is obligated to the parties as follows:

(1) to disclose to a buyer any adverse material fact that concerns the property and that is known to the statutory broker and not known to the buyer. However, the statutory broker is not required to conduct an independent inspection of the property or to verify any representation made by the seller.

1 (2) to disclose to the seller any adverse material fact that concerns the buyer's intent or ability to
2 perform on the purchase offer and that is known to the statutory broker and not known to the seller;

3 (3) to exercise reasonable skill, care, and diligence in facilitating the purchase and sale of the
4 property; and

5 (4) to comply with all applicable federal and state laws, rules, and regulations.

6 "Adverse material fact" means a fact that should be recognized by a broker as being of enough
7 significance as to affect a person's decision to enter into a contract to buy or sell real property. It may be
8 a fact that materially affects the value or structural integrity or presents a documented health risk to
9 occupants of the property, but may not include the fact that an occupant of the property has or has had
10 AIDS or another communicable disease or that the property was the site of a suicide or felony, or it may
11 be a fact that materially affects the buyer's ability or intent to perform the buyer's obligations under a
12 proposed or existing contract."

13 (f) Dual agent disclosure to the buyer and seller: "(Name of dual agent) is the agent of the buyer
14 interested in purchasing the property and of the seller of the property located at (address of property). A
15 dual agent is obligated to the buyer and seller as follows:

16 (1) to act solely in the best interests of the buyer and seller to the exclusion of all other interests
17 including the dual agent's;

18 (2) to obey promptly and efficiently all lawful instructions of the buyer and seller;

19 (3) to disclose to the buyer and seller all relevant and material information that concerns the real
20 estate transaction and that is known by the dual agent and not known by the buyer or seller, unless the
21 information is subject to confidentiality arising from a prior or existing agency relationship;

22 (4) to exercise reasonable skill, care, and diligence in pursuing the buyer's and seller's objectives
23 as established in the listing agreement and buyer broker agreement;

24 (5) to fully account to the buyer and seller for all funds or property of the buyer coming into the
25 dual agent's possession;

26 (6) to comply with all applicable federal and state laws, rules, and regulations;

27 (7) to carry out the terms of the buyer broker agreement; and

28 (8) to safeguard the buyer's and seller's confidences, except that the obligation to disclose relevant
29 and material information concerning the real estate transaction to either the buyer or the seller supersedes
30 any confidentiality requirement. However, the following may not be disclosed without the written consent

1 of the party to whom the information is confidential:

2 (a) that the buyer is willing to pay more than the buyer has offered for the property;

3 (b) that the seller is willing to accept less than the asking price for the property;

4 (c) factors motivating the buyer to buy or the seller to sell; and

5 (d) any other information that a party specifically indicates in writing to the dual agent is to be kept
6 confidential and that is not relevant and material information concerning the real estate transaction.

7 "Adverse material fact" means a fact that should be recognized by a broker as being of enough
8 significance as to affect a person's decision to enter into a contract to buy or sell real property. It may be
9 a fact that materially affects the value or structural integrity or presents a documented health risk to
10 occupants of the property, but may not include the fact that an occupant of the property has or has had
11 AIDS or another communicable disease or that the property was the site of a suicide or felony, or it may
12 be a fact that materially affects the buyer's ability or intent to perform the buyer's obligations under a
13 proposed or existing contract.

14 Upon signing this disclosure form, the buyer and seller acknowledge that they understand the
15 obligations owed by a dual agent to them and consent to the dual agent representing them as a dual
16 agent."

17 (7) A written disclosure that complies with the provisions of this section must be construed as a
18 sufficient disclosure of the relationship between a broker or salesperson and a buyer or seller and must be
19 construed as conclusively establishing the obligations owed by a broker or salesperson to a buyer or seller
20 in a real estate transaction.

21
22 **NEW SECTION. Section 5. Vicarious liability.** (1) A party to a real estate transaction is not liable
23 for a misrepresentation made by the party's agent or subagent unless:

24 (a) the party has actual knowledge of the misrepresentation; or

25 (b) the agent or subagent is repeating a misrepresentation made by the party.

26 (2) A broker is not liable for a misrepresentation made by the broker's broker associate or subagent
27 unless:

28 (a) the broker has actual knowledge of the misrepresentation;

29 (b) a broker associate making the misrepresentation is an employee of the broker and not an
30 independent contractor or subagent; or

1 (c) a broker associate or subagent is repeating a misrepresentation made by the broker.

2 (3) An agent is not liable for a misrepresentation made by the principal unless the agent has
3 knowledge of the misrepresentation.
4

5 NEW SECTION. **Section 6. Name change -- directions to code commissioner.** In Title 37, chapter
6 51, or in material enacted by the 54th legislature that is to be codified in Title 37, chapter 51, wherever
7 the name "salesman" appears, the code commissioner is directed to change the name to "salesperson".
8

9 NEW SECTION. **Section 7. Codification instruction.** [Sections 3 through 5] are intended to be
10 codified as an integral part of Title 37, chapter 51, part 3, and the provisions of Title 37, chapter 51, part
11 3, apply to [sections 3 through 5].
12

-END-

SENATE BUSINESS & INDUSTRY

Page 6

- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE - REREFERRED - DATE READ

SB0216	BECK, TOM	1/21	2/03	ESTABLISH CONTINUING EDUCATION REQUIREMENTS FOR CERTAIN INSURANCE PRODUCERS	PASS AS AMENDED	2/08	VOTE: UNAN	2/08
SB0224	CHRISTIAENS, CHRIS	1/23	2/01	REVISE REAL ESTATE BROKER AGENCY LAW & REQUIRE DISCLOSURE OF AGENT OBLIGAT'S	PASS AS AMENDED	2/07	VOTE: 8-1	2/07
SB0228	VAN VALKENBURG, FRED	1/24	2/03	PROHIBIT PARTNER CANCELLING INSURANCE WITHOUT MAJORITY OF PARTNERS CONSENT	PASS AS AMENDED	2/08	VOTE: 8-1	2/08
SB0239	VAN VALKENBURG, FRED	1/25	2/08	2/08, 2/14, REVISE BEER WHOLESALER INTERBRAND COMPETITION LAW -- SMALLER BRANDS	DO PASS	2/16	VOTE: 5-4	2/16
SB0242	GAGE, DELWYN	1/25	2/02	REVISE THE MEMBERSHIP OF THE BOARD OF HORSERACING	PASS AS AMENDED	2/07	VOTE: 8-1	2/08
SB0243	WILSON, WILLIAM	1/25	2/09	UPDATE SKIER RESPONSIBIITY CODE TO BE POSTED BY SKI AREA OPERATORS	PASS AS AMENDED	2/09	VOTE: UNAN	2/09
SB0246	WELDON, JEFF	1/25	2/03	2/06, 2/10, ADMINISTRATIVE WARRANT TO SEIZE PAWNED PROPERTY	PASS AS AMENDED	2/13	VOTE: 7-1	2/14
SB0253	HOLDEN, RIC	1/26	2/09	CREATE INSURANCE FRAUD PREVENTION ACT TO BE ENFORCED BY STATE AUDITOR	PASS AS AMENDED	2/13	VOTE: 6-2	2/14
SB0260	PIPINICH, BOB	1/27	2/10	GAMING INDEMNITY TRUST FUND	PASS AS AMENDED	2/10	VOTE: 5-3	TAXATION 2/10
SB0261	SPRAGUE, MIKE	1/27	2/09	PROHIBITS PUBLIC FROM DISPENSING FLAMMABLE LIQUID/MOTOR FUEL SOLD AT RETAIL	TABLED ON	02/09	VOTE: 6-3	
SB0284	VAN VALKENBURG, FRED	2/01	2/07	REQUIRE MARKET COMPARISON FOR PRICING UTILITY COAL	DO PASS	2/08	VOTE: UNAN	2/08
SB0287	HERTEL, JOHN	2/01	2/13	AUTHORIZE LABOR TO ADOPT RULE ALLOWING WAIVER OF SAFETY COMMITTEE	PASS AS AMENDED	2/13	VOTE: UNAN	2/14

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By CHAIRMAN JOHN HERTEL, on February 1, 1995, at
8:00 a.m.

ROLL CALL

Members Present:

Sen. John R. Hertel, Chairman (R)
Sen. Steve Benedict, Vice Chairman (R)
Sen. William S. Crismore (R)
Sen. C.A. Casey Emerson (R)
Sen. Ken Miller (R)
Sen. Mike Sprague (R)
Sen. Gary Forrester (D)
Sen. Terry Klampe (D)
Sen. Bill Wilson (D)

Members Excused: N/A

Members Absent: N/A

Staff Present: Bart Campbell, Legislative Council
Lynette Lavin, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 224, SB 170, HB 163
Executive Action: None

HEARING ON HB 163

Opening Statement by Sponsor:

REP. BETTY LOU KASTEN, HD 99, Brockway, told the committee HB 163 was a housekeeping bill. Those were statutes under which contracts were let for janitorial services. The purpose was to make changes in the requirements for bid and contract performance security. It would make it easier for businesses to bid on contracts and hopefully instill some competition in the bidding process. HB 163 changed the amount of security required, gave more flexibility to the Department, and gave flexibility to the term of the contract. Pages 1-9 were mostly language clean up, changing "bond" to "security" and listing the type of security that could be used. This was present practice, not new. Section

SEN. KEATING reported other committees had tried to come up with criteria for in-state presence but it would be just as confusing to try to define that and enforce it. He stated competition works. Should the government be involved in enforcing preference laws? He claimed it just comes back against the taxpayers in increased costs through the state, county, and school districts. Passage of SB 170 would make the marketplace more competitive, thus ensuring the ability to purchase things at the market value.

HEARING ON SB 224

Opening Statement by Sponsor:

SEN. CHRIS CHRISTIAENS, SD 23, Great Falls, remarked that SB 224 defined relationships between real estate brokers and buyers or sellers in real estate transactions. It culminates a lot of work by many people who realized there was need of some changes and redefining of roles and duties. He added there would be some amendments to this bill.

Proponents' Testimony:

Collin Banks, Montana Association of Realtors, stated that one of the things he liked about being in the real estate business was the opportunity to sell a buyer anything in town due to the multi-list service. He stated he enjoyed being able to get to know the buyers, spend time with them and have a chance to understand what they need and what their limitations were. Mr. Banks pointed out the problem with that; however, was the law had the idea that everyone who sold real estate was an agent or sub-agent of the seller. Mr. Banks stated this was a fallacy. He asked if he spent months with a buyer, how could he truly represent a seller whom he had never met. He reported there was a move to recognize the fact that there were different relationships that exist between buyers and sellers. SB 224 was a culmination of a number of years of debate and conflicting laws.

Al Littler, Montana Association of Realtors, remarked he would like to try to give a perspective on the changed atmosphere in the real estate industry and expand on the history of how SB 224 came about. Mr. Littler read his testimony, EXHIBIT #10. He also presented a letter from Clayton Fiscus, Fiscus Realty, EXHIBIT #11.

Mr. Littler related in the early days there were arguments between brokers which led to the multiple listing system. In the 1970's the Federal Trade Commission attacked the multiple listing system as an anti-trust situation. Realtors resorted to the premise that multiple listing was not a marketing situation but rather an agency/sub-agency relationship. The Federal Trade Commission continued its attack; however, and realtors began to entrench themselves in the agency/sub-agency system. Finally,

both sellers and buyers began to hire agents, which led to more arguing. Computers now printed data sheets of inventory accessible to any customer, EXHIBIT #12. The market had begun to change and so had the realtor's rôles. Sometimes the rôle of the agent was to provide a marketing system; buyers and sellers made decisions in their own best interest. There were other checks and balances involved in underwriting and financing.

In 1980, Mr. Littler reported the debate on agency became so heightened that the National Association of Realtors created a Presidential Advisory Committee (a PAG) to study the relationship. The Committee returned with a traditional point of view. The realtor could be an agent for the seller, an agent for the buyer, or a dual agent -- but nothing more. The realtors called for a "time out". In many states legislatures were making laws which allowed brokers to respond to the marketplace and negotiate their business contract for a fee equal to services rendered. The first report was unacceptable, so the President of the National Association of Realtors created a second Presidential Advisory Group. The PAG report, EXHIBIT #12-A, reported a realtor could be an agent for the seller, an agent for the buyer, or a dual agent, but the non-agency business relationships existed.

Mr. Littler explained there were nine critical points to this legislation. SB 224 stated realtors advocated the common law of agency and if they had a contract with the seller they owed him certain duties. However, they also owed duties to the buyer regarding disclosure and ethics. In a dual agency situation, one must be loyal to both sides. He stated in his agency, half of the listings were sold by agents in their office. If someone listed a piece of property, but a sister wanted to buy it, the agent would of course be more loyal to his sister. It was a limited dual agency which was disclosed to both sides. He stated he had never seen a buyer or seller refuse this situation. This legislation protected the old way of doing things. There were obligations in this legislation and it clarified the dual agency system. The legislation not only took care of the way realtors were operating in the State of Montana but it provided that the licensees would be able to perform in the new contracts. It made clear that they had duties to the two principles in the transaction, they had disclosure duties, and they must operate ethically. It helped the Board of Realty Regulation in administering rules and regulations concerning licensing because they had the power to revoke a license. Attorneys preferred this bill because it had a clearly written standard for measuring performance.

Zane Sullivan, Legal Counsel for the Montana Association of Realtors, stated that, nationally, there was not a uniform model law but the National Association of Realtors had proposed nine points that the state examined when addressing agency relationships and non-agency relationships. Some states had adopted those nine points into law and some had totally rejected

them. Pre-1950, it appeared there were no case decisions that addressed agency. During 1950-1960, some decisions were seen that said the agent represented the seller; this was traditionally true, but the marketplace in Montana had changed the same way it had changed nationally. People were coming in to buy and wanted a representative. Nothing in the existing statutory scheme addressed buyer representation. The Board of Realty Regulation had put language into the existing material that referred to buyer representation. Until 1991 there was nothing in our law that addressed, pro or con, the ability of the agent to be a dual agent until the Board of Realty Regulation made a change in its' regulation in 1991.

Mr. Sullivan stated there was a need to address how real estate licensees do business and how they relate to the consumer. One of the problems parties faced in transactions was disclosure of material conditions affecting property and disclosure; also, circumstances relating to a buyer's time-frame as well as his capability to buy. Right now there was a regulation that addressed "material condition" but there was no definition of this term.

Mr. Sullivan explained the purpose of the SB 224 was to try to clarify that which had not been addressed or had been too vaguely addressed in state or case law. The purpose of SB 224 was to set aside the old Band-Aids, establish clear parameters of the obligations of the licensee, determine what the buyer could expect, and what the seller could expect. It imposed some duties on real estate licensees. If they violated the duties, they would incur a liability. By the same token, the obligation would be more clear. On page 1, line 19, there was a discussion of adverse material fact. He expounded this came into play in our conditional of property scenario and in the buyer's capability. An adverse material fact deals with two elements; what were the conditions effecting the real property, such as structural, value, or a documented health risk. Those items, if they were known, should be disclosed to a buyer. Also, if something was known about the buyer's ability to pay, i.e., a bankruptcy the previous year, the buyer's agent would have the obligation to disclose that this was not a workable buy\sell agreement.

Mr. Sullivan also defined on Page 4, line 15, Mandated disclosure addressed the deformation of seller agency, subagency for the seller, statutory brokerage, buyer agency and dual agency. Page 7, Sec. 3, line 6, considered what the relationships and obligations were of the licensee to the various parties in each of the settings. "A seller's agent was obligated to the seller to... (list of obligations)". Line 24, Item 4 addressed what the buyer's agent's responsibilities would be. Page 8, line 11, addressed a statutory broker and his obligations. Line 22, addressed dual agent and the obligations. One of the keys to this legislation was the mandated disclosure. The bill addressed what must be contained in a disclosure document provided to the parties and when that disclosure must be made on Page 10, line 7.

At the end of the bill were the mandated disclosure forms. He doesn't believe that, from a liability standpoint, this bill changed what the general public "thinks" was the existing law in Montana, but was a clarification of the law and an attempt to set it out in writing and mandate disclosure.

Russell Hill, Montana Trial Lawyers Association, stated the association was a conditional proponent of the bill; it had some concerns with a few aspects of the bill. He admitted the supporters had been very forthcoming with the MTLA. He stated this was a good faith attempt not to change law but to clarify it. Mr. Hill claimed this was a complex attempt and felt realtors may assume some duties and obligations and liabilities under this bill that they didn't have in the common law. They chose to make the trade-off between a vague/flexible common law to something that is clear and mechanistic. The "reasonable standard" was incorporated in this bill.

Mr. Hill pointed out Page 1, line 19, the definition of adverse material fact was slightly different from the treatment of adverse material fact that appeared in the disclosure forms prescribed at the end of the bill. He stated there should be consistency. There were differences in the bill. Sometimes the bill used the term "actual knowledge" and sometimes it used the term "knowledge". He pointed out the legal significance of attempting to clarify current law and put very clear and definite duties on agents. The bill was less aggressive when it described what realtors should know but don't know either through neglect, understandable problems, or errors of omission. He said the general projections for errors of co-mission are very strong, as it was clear there was less flexibility in dealing with specific fact circumstances on errors of omission.

Mr. Hill drew the Committee's attention to Page 14, Section 3, line 17 and explained if one of the agents didn't abide by the technical rules, that agent would be statutorily in violation. He stated Subsection 7 needed an amendment because it claimed there was a relationship between a buyer, seller and their agent that was construed as conclusively establishing the obligations to the extent that the disclosure reflected this law. He rendered that was true, but there were some things in the law that were not in the disclosure. He suggested that after the word "construed" in subsection 7, "in conjunction with this chapter" or "in conjunction with the statute" be inserted.

Mr. Hill further related Section 3, subsection 1, page 7, the statute was intended to replace common law as it applied to those relationships. The result, if the bill passed, would wipe the slate clean on all the court decisions that had to do with common law.

{Tape: 2; Side: A}

Opponents' Testimony: None

Informational Testimony: None

Questions From Committee Members and Responses:

SEN. BENEDICT questioned Mr. Sullivan about bankruptcy. How would the agency find out about a person's prior credit history without doing a disclosure form for the buyer. He wondered if the agent would be in trouble if the agency did not conduct their business with the same due diligence as a bank. Mr. Sullivan replied this was intended to stay within the realm of what the agent actually knew. The agents would not be required to investigate their clients. If the licensee had the information, he would be obligated to disclose it.

SEN. BENEDICT asked Mr. Sullivan how he would address Mr. Hill's inference that this negated all existing case law. Mr. Sullivan stated that Mr. Hill was exactly correct, that it had been done intentionally. There were significant court cases in which the licensee was taken to task in class action suits because the client was not deemed to have informed consent. In Montana the same problem occurred. Realtors had a whole series of Band-Aid case decisions and bits and pieces in the statutes that tried to address certain situations, but there were gaping holes. They didn't know when the agents' responsibility starts or stops. Realtors wished to throw out the baggage and start fresh with a series of good definitions.

SEN. EMERSON told Mr. Sullivan it sounded as if limits and regulations were being set on agents. Would that affect sellers and buyers and would it be cumbersome for those people? Mr. Sullivan replied that SB 224 does set obligations on the sellers and buyers, one of which required a buyer to do some investigation; they should not expect someone else to carry the ball for them. The bill clearly sets out the parameters and stated what can be expected from the licensee. SEN. EMERSON stated it seemed they were getting a lot of government paperwork under the presumption of protecting the buyer and seller. Weren't there less law suits in the past? Mr. Sullivan replied that he guessed there were, but pointed out the complexity of life these days. He said he would like to see the same situations exist as back then, but that would not be realistic.

SEN. MILLER asked Mr. Sullivan what he thought of Mr. Hill's suggested amendments. Mr. Sullivan stated that they have discussed some language items about the type of knowledge. He thought there were a few amendments that were proposed to address Mr. Hill's concerns.

SEN. FORRESTER asked Al Littler if he saw a listed property, with a person's sign in a yard, could he call the selling agent or did he have to find another one. Mr. Littler said this bill would require the realtor to fully disclose to his/her relationship

with the seller and required them to act ethically. SEN FORRESTER asked if he was to use Mr. Littler as his agent, what would Mr. Littler's profit margin be, as opposed to being agent to just one. Mr. Littler replied the commission is broken between the two firms and then between the two agents, four ways.

Closing by Sponsor:

SEN. CHRISTIAENS closed by declaring he believed this bill clarified issues that concern most buyers and sellers. It handled the what, when and how of disclosure. He gave the committee a fact sheet, EXHIBIT #13. He stressed Montana had been discovered and because of that there would be more and more real estate transactions in the coming years.

Floberg REALTORS®

923 Broadwater Square
Billings, MT 59101
Bus. (406) 245-6161
Fax (406) 248-7653

January 27, 1995

Senator John Hertel
Montana Senate
Capital Station
Helena, MT 59620

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 10
DATE 2-1-95
BILL NO. SB 224

Dear Senator Hertel,

I plan to testify in support of Senator Christiaens' Senate Bill 224 on Wednesday morning. As you know, this bill clearly lists the duties a real estate licensee owes sellers and buyers under the various business relationships.

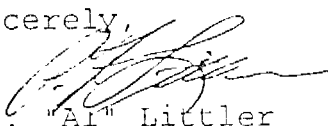
In an open and competitive marketplace sellers and buyers don't have to use the services of brokers. However, should any member of the public choose to use the services of a broker, he or she deserves to know the duties that they can expect from a real estate licensee in the State of Montana.

This "model" Legislation has a long history of development. It takes into consideration all the pros and cons about the common law of agency. It recognizes business relationships that go on daily, but are not covered by the regular agency law. This legislation (1) benefits the selling and buying public, (2) gives licenses specific duties to perform in their business relationships, (3) gives the Board of Realty Regulation and the courts a clear list of duties from which to judge licensee performance in disputed business relationships and/or contracts.

For years I've testified before various committees on technical issues concerning the practice of real estate brokerage and the rights of people to buy and sell real estate and to develop that property to its highest and best use. Senator Al Bishop has made it clear to me that I should do only two things: (1) make my points clear and short (2) answer the questions that are on the minds of the legislators. I've made my points in this letter. Lord willing, I'll see you Wednesday to answer questions, if any.

Thank you for giving this important bill your careful consideration.

Sincerely,


A.F. "Al" Littler
Broker / Owner
General Manager

cc: Senator Chris Christiaens

Fiscus Realty

1111 MAIN STREET
P.O. BOX 50328
BILLINGS, MONTANA 59105
(406) 252-6400

January 31, 1995

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 11

DATE 2-1-95

BILL NO. SB 224

(presented by
al Jitter)

Dear Senator

Please **SUPPORT SB 224**. Proposed agency legislation to be heard in Senate Business and Industry February 1, 1995 Room 410.

Why?

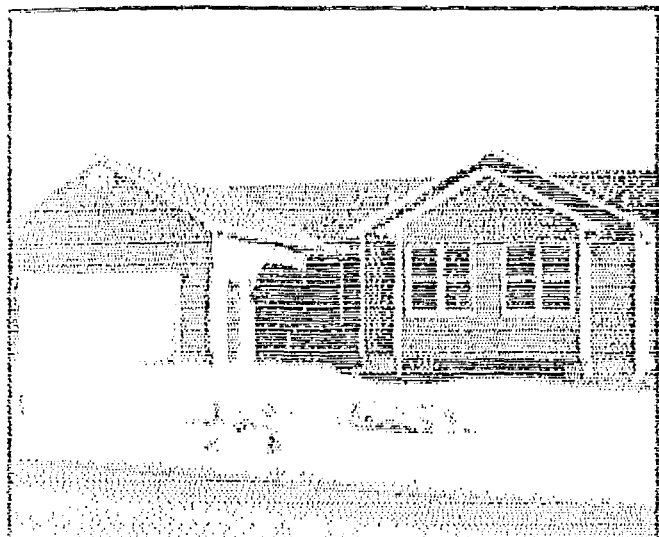
1. This legislation will allow buyers and sellers to understand the relationship with their Real Estate agent by clarify the duties and responsibilities the agent is required to perform.
2. This legislation is market driven and will be compatable with what buyers and sellers are demanding in their Real Estate business deals today.
3. Buyers and sellers are demanding specific relationships with agents which current laws do not provide.
4. This legislation spells out the duties and responsibilities of a Real Estate agent that will protect buyers and sellers even though they do not contract for a special agency relationship.
5. Current law is a mass of amendments and is very antiquated toward the way business is done today.

This legislation is supported by the National Association of Realtors and has been implemented in many states.

Thanks you for your time.

Sincerely,

Clayton Fiscus
Fiscus Realty
Broker/Owner



PROVIDED BY AF "AL" LITTLER
245-6161 OFFICE
652-4848 HOME
698-3328 MOBILE

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 12

DATE 2-1-95

BILL NO. SB 224

Billings Assoc. of Realtors RESIDENTIAL 01/11/95 10:23 AM
ML# 43566 Status ACT Type SINGLE L/Office METRO1 L/Price \$ 10990
Address 1739/ /ST ANDREWS DRIVE City BILLINGS Drig LP \$ 10990
Subdiv LAKE HILLS SUB Unit# 1 Cnty YELLOW S Zone R-96 Area#
Legal LOT 5, BLOCK 27 Lot SqFt 13300 Acres .0

----- PUBLIC SCHOOLS -----
Elementary BENCH Jr High CASTLE Sr High SKYVIEW

----- GENERAL INFORMATION -----
Style RANCH Year Built 1994/NEW #Bedrooms 3.
SqFt/\$SqFt 1297/ \$4.73 Garage/Desc 2/ATTACHED #Bathrooms 2.
SqFt Up/Main 0/ 1297 Roof/Lot SHINGLE/VIEW #Levels 2
SqFt Lw/Bsmt 0/ 1297 Basement FULL /NONE
Siding OTHER /FRAME Color BLUE

Rem: NICE OPEN FLOOR PLAN W/VAULTED CEILINGS & VIEW, WE WILL ADD CLOSET TO
DEN UPON REQUEST, CENTRAL AIR, LOW MAINT. EXTERIOR W/COLOR LOK SIDING,
METAL FACIA/SOFFIT, MAIN FLOOR UTILITIES, DOUBLE SINKS IN MASTER BATH
CD LISTER ERNIE DUTTON, TAXES NOT SPREAD.

----- ROOM DESCRIPTIONS -----
Living Room M/VAULTED Mstr Bedroom M/BATH #Full Baths 0 2 0
Kitchen M/EATIN 2nd Bedroom M/NA #Half Baths 0 0 0
Dining Room M/EATAREA 3rd Bedroom M/NA #Showers 0 2 0
Family Room N/NA 4th Bedroom N/NA #Bedrooms 0 3 0
Utility Room N/NA Other Room N/NA #Fireplaces 0 0 0

----- ADDITIONAL FEATURES -----
Oven/Range Y/FREE Micro N Pool N/NONE Tot# Fireplaces
Refrg N Disp N Comp N Ext Feat NONE /NONE Alley
Dishw Y UgSp N Wall N Misc Feat NONE /NONE Fenced
Other Appl NONE /NONE Restr/Disc1 SEEDEED/ONFILE Cable
Int Feat NONE /NONE HOA Incl NONE /NONE HOA Fee/Month \$

----- UTILITIES AND ENERGY INFORMATION -----
Heating BFA Water PUBLIC Gas Water Electric
Cooling CENTRAL Sewer PUBLIC \$ 0 \$ 0 \$ 0

----- FINANCIAL INFORMATION -----

Possession CLOSING Taxes \$ 0 Points N Annual SID \$
TaxID UNKNOWN SID Payoff \$
Financing C/=/F/V/ / / / /
(c) MLS INFORMATION DEEMED RELIABLE BUT NOT GUARANTEED Completed



MONTANA ASSOCIATION
OF REALTORS®

The Voice for Real Estate™ in Montana

EXECUTIVE OFFICES
208 North Montana, Suite 105
Helena, MT 59601

Telephone 406 443-4032
In Montana 800-477-1864
Fax 406 443-4220

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 12A

DATE 2-1-95

BILL NO. SB 224

(cover letter)

February 2, 1994

Dear Chairman Hatal,

Pursuant to my promise made at
the hearing on SB 224 last Tuesday,
enclosed is a copy of the "P.A.G." report
which was referred to at the hearing.

Please include this report in the
committee's record (hearing) for the
bill.

Thank you,


SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 12-A

DATE 2-1-95

BILL NO. SB 224

*(presented by John Shontz
at the request of Al Little)*

Report of the Presidential Advisory Group on the Facilitator/Non-Agency Concept

The original of this document is stored at
the Historical Society at 225 North Roberts
Street, Helena, MT 59620-1201. The phone
number is 444-2694.

(unbound report)

October 1993

NATIONAL ASSOCIATION OF REALTORS®

Table of Contents

	<u>Page</u>
I. Executive Summary	1
II. Introduction	3
III. Background	4
IV. Process	6
V. Defining Evolving Terminology and Definitions Being Used to Describe a Non-Agency Brokerage Relationship	7
VI. Recommendations and Rationale	8
Recommendation Number 1	9
Recommendation Number 2	13
Recommendation Number 3	23
Recommendation Number 4	24
VII. Recent State Activity: Enacted/Proposed Legislation	25
VIII. Conclusion	30
Appendices	
Appendix A	Legal Evaluation
Appendix B	Summary of Market Research
Appendix C	Pros and Cons
Appendix D	Colorado Legislation
Appendix E	Georgia Legislation
Appendix F	Illinois Legislation
Appendix G	Minnesota Legislation
Appendix H	Texas Legislation
Appendix I	Proposed Wisconsin Legislation
Appendix J	NAR Standard of Practice 7-8
Appendix K	NAR Policy on Agency



GOVERNMENT AFFAIRS UPDATE

Montana Association of REALTORS®
208 N. Montana, Ste. 105/Helena, MT 59601
In Montana 800-477-1864 or 406-443-4032/FAX # 406-443-4220

SENATE BUSINESS & INDUSTRY:
EXHIBIT NO. 13
DATE 2-1-95
BILL NO. SB 224

presented by Sen. Chris Christiaens (bill sponsor)

The Government Affairs Update is published bi-weekly during the legislative session and summarizes some of the bills which are most important to REALTORS® and property owners. The Update will be mailed to MAR directors, Legislative, Political Affairs, RPAC, Issues Mobilization and Property Manager committee members, local board contact coordinators, board presidents and Executive Officers. During the session, the MAR lobbyists will monitor approximately 250 bills. Not all of them are in the Update. If you have questions on specific bills

please call the numbers listed below.

INFORMATION

Copies of bills can be downloaded from the state bulletin board system or obtained from your county Clerk & Recorder's office. For more information call 1-800-962-1729.

Hearing Schedule: Read your daily paper.

Tracking status: Call Anne at 1-800-477-1864.

To contact a legislator: 1-406-444-4800

1-900-225-1400

To FAX a legislator: 1-900-225-1600

Report # 1 of the 54th Legislature

January 17, 1995

After a slow start, the Legislature is beginning to move forward with normal speed. As of today, about 1,500 bills have been requested. An additional 150 bills will probably be introduced through the remainder of the session.

Your Association is tracking about 225 bill draft requests (requests by Legislators for bills to be drafted). To date, about 35 of those bills have been introduced. Your Association is tracking each of these requests and bills daily.

Bills affecting subdivisions, zoning, water and sewer are currently being drafted. None have yet been introduced; your association is working to assure that the bills meet REALTOR® needs BEFORE they are introduced.

One bill and a bill draft that have surfaced to date are:

SB 12 - This bill was introduced by Senator John Harp at the request of the Board of Realty Regulation. The bill would allow the Board to fine licensees up to \$5,000 per license violation in addition to suspension or revocation of a license. The bill was heard last week by the Senate Business and Industry Committee. The Committee tabled the bill until it can review a omnibus licensing bill suggested by the Dept. of Commerce. The omnibus bill will standardize certain administrative procedures for all boards in Montana. Your Association made comments on the bill at the hearing regarding the size and application of any potential fine.

LIMITED AGENCY BILL - Senator Chris Christiaens from Great Falls will introduce a bill next week that will substantially reduce REALTORS® exposure to litigation. A "talking points" paper is printed on the reverse side of this report. A big thanks to Al Littler for preparing the "talking points." If you would like more information on the bill, please call Anne Alberts, Legislative Intern, at the MAR office and request the Limited Agency Bill Summary. The summary will be sent to you via mail. In addition, the bill will be available on the state's legislative bulletin board within a week. Zane Sullivan and John Tabaracci, MAR Legal Counsel, deserve a big thanks for their dedication in making sure this bill will protect REALTORS® and Montana consumers.

Talking Points

Business Relationships in Real Estate Transactions

The current law governing real estate licensee relationships with buyers and sellers of property is antiquated. Furthermore, the current law is the result of a scattering of many small amendments to the status over a period of many years. For example, Montana law does not clearly allow a licensee to represent a buyer in a real estate transaction; the licensee working with the buyer technically represents the seller unless a licensee/buyer written agreement is actually signed.

The real estate industry proposes legislation that will:

- (1) Modernize the law to meet many of the current practices.
- (2) Clarify for consumers what a licensee can and cannot do on behalf of a buyer or seller.
- (3) Require that a licensee fully disclose to each consumer the kinds of representation that can be offered to a consumer and fully disclose to the consumer what each representation entails.
- (4) Places obligations on a licensee even if the consumer chooses not to sign a written agreement.

The legislation clarifies in the law the types of business relationship that consumers generally ask of licensee. **IMPORTANTLY**, the bill will require that the licensee fully disclose to the consumer the possible relationships to the extent that the consumer understands the relationships and makes an enlightened choice.

- (1) The classic licensee/seller agreement is, of course, where the licensee works for the seller. The licensee will have to disclose the relationship to prospective buyers.
- (2) Many buyers want licensees to represent them in a transaction. The bill clearly established the perimeters in which licensee can represent a buyer in a transaction. The licensee will have to disclose the relationship to prospective sellers.
- (3) At times a real estate office will contract to sell a property and represent the buyer (rather than one office listing the property on behalf of the seller and a second office showing the property to buyers). The bill will permit the office to appoint a licensee to represent the interests of the buyer and a licensee to represent the interests of the seller, thus assuring that both buyers and sellers have a professional assist them with their concerns in the transaction. This dual business relationship must be disclosed and agreed to by the buyer or seller.
- (4) The bill assures that an unsuspecting consumer/seller is not liable for false statements made by a licensee and visa-versa.
- (5) Many consumers do not want a formal or written business relationship with a licensee. The bill allows such a relationship and clearly holds the licensee responsible to treat all parties to the transaction in an honest manner.

DATE February 1, 1995

SENATE COMMITTEE ON Business and Industry

BILLS BEING HEARD TODAY: SB 163 Rep. Kasten

SB 170 Senator Keating SB 224 Senator Christensen

< ■ >

PLEASE PRINT

< ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Greg Thrall	Border States Elec.	SB 170	X	
JOE CHAUVIN	GRAYBAR ELECTRIC CO	SB 170	X	
Leon Stalcup	Mt Rest. Assoc	SB 170		X
Ed Bueghardt	Unisource	SB 170	X	
MARVIN EICHOITZ	DOA	SB 163 SB 170	X X	
Jim NYS	Personnel Plus	SB 163		X
MIKE HAM	WESTERN TEL + Data	SB 163		X
Pat Melby	Columbia Paint Co.	SB 170	X	✓
J. Shostz	Mt Assoc Realtors	SB 224	X	
A.F. Litter	The Puget Sound Filing Realtors	224	X	
COLLIN BANGS	MT ASSOC. REALTORS	224	X	
ZANE SULLIVAN	MT. ASSOC. of Realtors	SB 224	X	
Bob Pyfer	MT Credit Union League	HB 163	X	
DAN WALKER	US WEST	SB 170	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE Feb. 1, 1995
 SENATE COMMITTEE ON Business & Industry
 BILLS BEING HEARD TODAY: HB 163,
SB 170 SB 224

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppo
Russell B Hill	MTLA	SB 224	?	
J. Shontz	MT Assoc REALTORS	224	X	
Mr. Al Littler	" " "	"	X	
Mr. Zane Sullivan	" " "	"	X	
Mr. Collin Banks	" " "	"	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By CHAIRMAN JOHN HERTEL, on February 7, 1995, at
8:00 a.m.

ROLL CALL

Members Present:

Sen. John R. Hertel, Chairman (R)
Sen. Steve Benedict, Vice Chairman (R)
Sen. William S. Crismore (R)
Sen. C.A. Casey Emerson (R)
Sen. Ken Miller (R)
Sen. Mike Sprague (R)
Sen. Gary Forrester (D)
Sen. Terry Klampe (D)
Sen. Bill Wilson (D)

Members Excused: N/A

Members Absent: N/A

Staff Present: Bart Campbell, Legislative Council
Carla Turk, Recording Secretary, in absence of
Lynette Lavin, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 284, HB 243
Executive Action: SB 224 DO PASS AS AMENDED
HB 243 BE CONCURRED IN

HEARING ON HB 243

Opening Statement by Sponsor:

WILLIAM "RED" MENAHAN, HD 57, Anaconda, presenting HB 243, which
came about to equalize the time to renew licenses. He stated
other professions had a year to renew their licenses if they
missed the date. REP. MENAHAN told the committee this
legislation allowed electrical contractors the same amount of
time, a year, to renew their licenses.

hearing in future rate cases from a PSC that decided it must come in and side against the MPC on this sort of a policy issue. He said could the committee imagine the Montana Supreme Court coming over here and telling the legislature it should not change the law on something that the Montana Legislature had every right to change the law on, but the court had decided a different way earlier. He declared it would not happen. He contended it would not happen in Montana if the Public Service Commission were really being fair to the Montana Power Company. He stated they were not and that was why this bill was here and was why SEN. VAN VALKENBURG was asking this committee to pass SB 284.

EXECUTIVE ACTION ON SB 224

Discussion: Bart Campbell stated the amendments, EXHIBIT #7, were requested by the Sponsor, SEN. CHRISTIANS. They also reflected a couple of changes after the hearing in response to Russell Fields testimony and the Trial Lawyers testimony. Mr. Campbell did not know as far as protocol whether or not the amendments be moved before he spoke further.

Motion: SEN. MIKE SPRAGUE MOVED TO ADOPT AMENDMENTS, SB022401.ABC.

Discussion: Mr. Campbell continued his explanation on the amendments. He stated they were "clean up" and he explained all 8 amendments, (EXHIBIT #7).

Vote: The motion to ADOPT THE AMENDMENTS CARRIED UNANIMOUSLY, EXHIBIT #7.

Discussion: SEN. STEVE BENEDICT related he would like to amend further. This would be a conceptual amendment. Page 1, line 13, strike "five" and insert "seven" and on Page 1, line 17, strike "three" and insert "five". In other words, he would like to make this a seven member board. The committee would add two members from the horseracing industry on the board.

Motion: SEN. STEVE BENEDICT MOVED TO AMEND SB 242, on Page 1, line 13, strike "five" and insert "seven" and on Page 1, line 17, strike "three" and insert "five".

Discussion: SEN. TERRY KLAMPE stated the optimal size of the board should be seven and he agreed with that number.

SEN. MIKE SPRAGUE disagreed as he thought the optimal size should always be the smaller number. He did not have a problem with the number being "six" and "one". He believed it would be a little strong in terms of the horseracing integrity if they had two members.

SEN. GARY FORRESTER asked SEN. CASEY EMERSON if that would satisfy his concerns of the seven member board. SEN. EMERSON stated this would be better than what he had suggested.

SEN. BENEDICT remarked, in fairness to the Board of Horseracing, they came to him when he told them what he wanted to do with the bill and they said there would be a financial impact by putting two more members on the board, about \$2,000 to \$4,000 a year. He asked them where their money came from and he was told it came from a special revenue account, which was assessments on horseracing and on the handles from horseracing. He could not remember how many million dollars the handles from horseracing was, but it didn't sound like it would be a terrible impact on the board.

SEN. KLAMPE conveyed adding members from the industry on the board would make sense. Two members would be better than one in case one was ill or couldn't attend the meeting, there would still be representation.

SEN. SPRAGUE asserted from the testimony the committee had heard, the makeup was adequate with five members. He asserted this was a gaming issue.

SEN. JOHN HERTEL asked SEN. BENEDICT if he had contacted the sponsor and if so, was he in agreement. SEN. BENEDICT stated he had not contacted the sponsor; however, he thought the sponsor in order to get the two members on, would feel this was a good number.

SEN. EMERSON said horseracing had dropped off 50% during the last ten years and they felt part of the reason was because this board was not interested in promoting horseracing.

SEN. KLAMPE said the Department of Commerce had 34 boards and this board was not amongst those 34; however, every one of those boards had members of the profession represented on the board and he thought this was appropriate.

Mr. Campbell remarked he had a technical question to put before the committee; Page 2, section 2, "transition", stated "The new members shall serve the remainder of the existing term to provide for the staggered terms required under 2-15-1881". His question was the committee would be replacing five members and those staggered terms, but now had seven members, so that meant two members that couldn't fill an existing member and take up a staggered term. Mr. Campbell asked the committee to hold this until he had a suggestion on how that should be phrased to make it work.

SEN. BENEDICT reported his only concern would be the lobbying that would be done between now and tomorrow morning. He would rather go ahead to pass the amendment and if it should need further amending, to do that on the floor.

SEN. EMERSON contended he did not see where this would be a problem. They had to be there three years and staggered terms; he thought that could be arranged without any difficulty.

Mr. Campbell maintained that was not really the question. The Governor would replace all the existing board members and this would be the five members and then he would add new ones and who would serve the staggered term. The question Mr. Campbell had was now they had five and that would fill up those staggered terms, but if it was passed with seven, there would be two extra members. He stated SEN. BENEDICT's suggestion would work, if it passed out of the committee, he could certainly prepare a floor amendment if one was necessary.

Vote: The motion to ADOPT THE AMENDMENT ON SB 242, that SEN. BENEDICT presented CARRIED 7-2 on voice vote with SEN. SPRAGUE AND SEN. WILSON voting "NO".

Motion/Vote: SEN. EMERSON MADE THE MOTION THAT SB 242 DO PASS AS AMENDED. The motion SB 242 DO PASS AS AMENDED CARRIED 8-1 on voice vote with SEN. SPRAGUE voting "NO".

EXECUTIVE ACTION ON HB 243

Motion/Vote: SEN. BENEDICT MOVED HB 243 BE CONCURRED IN. The motion CARRIED on voice vote with SEN. KLAMPE ABSTAINING from the vote. SEN. FORRESTER agreed to CARRY HB 243 on the Senate floor.

40

MONTANA SENATE
1995 LEGISLATURE
BUSINESS AND INDUSTRY COMMITTEE

ROLL CALL

DATE _____

2-7-95

[illegible]

SEN:1995
wp.rollcall.man
CS-09

۱۱

Amendments to Senate Bill No. 224
First Reading Copy

Requested by Senator Christians
For the Committee on Business and Industry

Prepared by Bart Campbell
January 31, 1995

1. Page 7, lines 9 and 27.
Following: "relevant"
Insert: "and material"
2. Page 12, line 15.
Following: "the"
Strike: "property"
Insert: "ability of the buyer to perform on any purchase offer"
3. Page 12, line 23.
Following: "Statutory"
Strike: "agent"
Insert: "broker"
4. Page 13, line 24.
Following: "of the buyer"
Insert: "and seller"
5. Page 13, line 28.
Strike: "except that"
Insert: "subject to"
6. Page 13, lines 28 through 30.
Strike: "relevant" on line 28 through "However, the" on line 30
Insert: "to a buyer or a seller any adverse material facts that
are known to the dual agent, regardless of any
confidentiality considerations. The"
7. Page 14, line 6.
Strike: "relevant" through "transaction"
Insert: "an adverse material fact"
8. Page 15, line 2.
Following: "has"
Insert: "actual"

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 7, 1995

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration SB 224 (first reading copy -- white), respectfully report that SB 224 be amended as follows and as so amended do pass.

Signed: John Hertel
Senator John R. Hertel, Chair

That such amendments read:

1. Page 7, lines 9 and 27.

Following: "relevant"

Insert: "and material"

2. Page 12, line 15.

Following: "the"

Strike: "property"

Insert: "ability of the buyer to perform on any purchase offer"

3. Page 12, line 23.

Following: "Statutory"

Strike: "agent"

Insert: "broker"

4. Page 13, line 24.

Following: "of the buyer"

Insert: "and seller"

5. Page 13, line 28.

Strike: "except that"

Insert: "subject to"

6. Page 13, lines 28 through 30.

Strike: "relevant" on line 28 through "However, the" on line 30

Insert: "to a buyer or a seller any adverse material facts that are known to the dual agent, regardless of any confidentiality considerations. The"

7. Page 14, line 6.

Strike: "relevant" through "transaction"

Insert: "an adverse material fact"

8. Page 15, line 2.

Following: "has"

Insert: "actual"

-END-

 Amd. Coord.

 Sec. of Senate

321233SC.SRF

u3

2nd Reading, Committee of Whole

SENATE JOURNAL
THIRTY-THIRD LEGISLATIVE DAY - FEBRUARY 8, 1995

Absent or not voting: Jenkins.
Total 1

Excused: None.
Total 0

Senator Weldon excused at this time.

Senator Swysgood moved SB 209, as amended, do pass. After discussion, Senator Harp made a substitute motion that consideration of SB 209 be passed for the day. Motion carried unanimously.

SB 224 - Senator Christiaens moved SB 224 do pass. Motion carried unanimously.

SB 235 - Senator Miller moved SB 235 do pass. Motion carried unanimously.

SB 278 - Senator Van Valkenburg moved SB 278, second reading copy, be amended as follows:

1. Page 12, lines 6 through 9.

Strike: Subsection (7) in its entirety

Renumber: subsequent subsection

2. Page 15, lines 15 and 16.

Strike: "THE firearm USED IN THE ASSAULT"

Insert: "any weapon"

3. Page 18, lines 23 and 24.

Strike: "THE firearm USED IN THE ASSAULT"

Insert: "any weapon"

4. Page 21, line 9.

Strike: "THE firearm USED IN THE ASSAULT"

Insert: "any weapon"

Motion failed as follows:

Yeas: Bartlett, Brooke, Christiaens, Cole, Doherty, Eck, Forrester, Franklin, Gage, Halligan, Jacobson, Jenkins, Jergeson, Klampe, Lynch, Miller, Pipinich, Stang, Van Valkenburg, Waterman, Wilson, Mr. President.

Total 22

Nays: Aklestad, Baer, Beck, Benedict, Bishop, Burnett, Crippen, Crismore, Devlin, Emerson, Estrada, Foster, Grosfield, Harding, Hargrove, Harp, Hertel, Holden, Jabs, Keating, Mesaros, Mohl, Nelson, Sprague, Swysgood, Toews, Tveit.

Total 27

Absent or not voting: None.
Total 0

Excused: Weldon.

3rd Keating

SENATE JOURNAL
THIRTY-FOURTH LEGISLATIVE DAY - FEBRUARY 9, 1995

SB 135 passed as follows:

Yeas: Aklestad, Baer, Beck, Benedict, Bishop, Burnett, Cole, Crippen, Crismore, Devlin, Emerson, Estrada, Forrester, Foster, Gage, Harding, Hargrove, Harp, Hertel, Holden, Jabs, Jacobson, Jenkins, Keating, Lynch, Mesaros, Miller, Mohl, Nelson, Sprague, Stang, Swysgood, Tveit, Mr. President.

Total 34

Nays: Bartlett, Brooke, Christiaens, Doherty, Eck, Franklin, Grosfield, Halligan, Jergeson, Klampe, Pipinich, Toews, Van Valkenburg, Waterman, Weldon, Wilson.

Total 16

Paired: Harp, Aye; Brooke, No.

Absent or not voting: None.

Total 0

Excused: None.

Total 0

SB 181 passed as follows:

Yeas: Bartlett, Bishop, Brooke, Christiaens, Cole, Crippen, Crismore, Doherty, Eck, Emerson, Franklin, Gage, Halligan, Harding, Hargrove, Hertel, Holden, Jabs, Jacobson, Jergeson, Klampe, Lynch, Mesaros, Mohl, Nelson, Pipinich, Stang, Swysgood, Tveit, Van Valkenburg, Waterman, Weldon, Wilson, Mr. President.

Total 34

Nays: Aklestad, Baer, Beck, Benedict, Burnett, Devlin, Estrada, Forrester, Foster, Grosfield, Harp, Jenkins, Keating, Miller, Sprague, Toews.

Total 16

Paired: Brooke, Aye; Toews, No.

Absent or not voting: None.

Total 0

Excused: None.

Total 0

SB 224 passed as follows:

Yeas: Aklestad, Baer, Bartlett, Beck, Benedict, Bishop, Burnett, Christiaens, Cole, Crippen, Crismore, Devlin, Doherty, Eck, Emerson, Estrada, Forrester, Foster, Franklin, Gage, Grosfield, Halligan, Harding, Hargrove, Harp, Hertel, Holden, Jabs, Jacobson, Jenkins, Jergeson, Keating, Klampe, Lynch, Mesaros, Miller, Mohl, Nelson, Pipinich, Sprague, Stang, Swysgood, Toews, Tveit, Van Valkenburg, Waterman, Weldon, Wilson, Mr. President.

Total 49

Nays: None.

Total 0

SENATE JOURNAL
THIRTY-FOURTH LEGISLATIVE DAY - FEBRUARY 9, 1995

Absent or not voting: None.
Total 0

Excused: Brooke.
Total 1

SB 235 passed as follows:

Yeas: Aklestad, Baer, Bartlett, Beck, Benedict, Bishop, Burnett, Christiaens, Cole, Crippen, Crismore, Devlin, Doherty, Eck, Emerson, Estrada, Forrester, Foster, Franklin, Gage, Grosfield, Halligan, Harding, Hargrove, Harp, Hertel, Holden, Jabs, Jacobson, Jenkins, Jergeson, Keating, Klampe, Lynch, Mesaros, Miller, Mohl, Nelson, Pipinich, Sprague, Swysgood, Toews, Tveit, Waterman, Weldon, Wilson, Mr. President.
Total 47

Nays: Stang, Van Valkenburg.
Total 2

Absent or not voting: None.
Total 0

Excused: Brooke.
Total 1

SB 278 passed as follows:

Yeas: Baer, Bartlett, Beck, Benedict, Bishop, Brooke, Burnett, Christiaens, Cole, Crippen, Crismore, Devlin, Doherty, Eck, Emerson, Estrada, Forrester, Foster, Franklin, Gage, Grosfield, Halligan, Harding, Hargrove, Harp, Hertel, Holden, Jabs, Jacobson, Jenkins, Jergeson, Keating, Klampe, Lynch, Mesaros, Miller, Nelson, Pipinich, Sprague, Stang, Swysgood, Toews, Tveit, Van Valkenburg, Waterman, Weldon, Wilson, Mr. President.
Total 48

Nays: Aklestad, Mohl.
Total 2

Absent or not voting: None.
Total 0

Excused: None.
Total 0

SJR 2 House Amendments concurred in as follows:

Yeas: Aklestad, Bartlett, Beck, Benedict, Brooke, Burnett, Christiaens, Cole, Crippen, Crismore, Devlin, Doherty, Eck, Emerson, Forrester, Foster, Franklin, Gage, Grosfield, Halligan, Harding, Hargrove, Harp, Hertel, Holden, Jabs, Jacobson, Jenkins, Jergeson, Keating, Klampe, Lynch, Mesaros, Miller, Mohl, Nelson, Pipinich, Sprague, Stang, Swysgood, Toews, Tveit, Van Valkenburg, Waterman, Weldon, Wilson, Mr. President.
Total 47

HOUSE BUSINESS & LABOR

Page 10

- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE -----
 -- REREFERRED ---- DATE READ

SB0095	BISHOP, AL		REVISE HEARING AID TRAINEE LICENSURE				
	2/01	2/10	CONCUR	2/10	VOTE: 18-0		2/10
SB0100	BECK, TOM		AUTHORIZE LOCAL GOV LOANS FOR CERTAIN ECONOMIC DEV PROJECTS; AKA MICRON BILL				
	1/17	1/18	CONCUR	1/19	VOTE: 18-0		1/19
SB0125	KEATING, TOM		EXEMPT PETROLEUM LAND PROFESSIONALS FROM UNEMPLOYMENT AND WORKERS COMP				
	1/30	2/07	CONCUR AS AMENDED	2/7	VOTE: 18-0		2/08
SB0151	BARTLETT, SUE		REVISE DEFINITIONS OF TEMPORARY SERVICE CONTRACTOR AND TEMPORARY WORKER				
	2/06	3/07	CONCUR	3/8	VOTE: 18-0		3/08
SB0171	FRANKLIN, EVE		LICENSE PHYSICAL THERAPY ASSISTANTS				
	2/03	2/28	CONCUR AS AMENDED	2/28	VOTE: 18-0		3/01
SB0177	FOSTER, MIKE		REQUIRE CERTAIN INSURERS, CORPS & HMOS TO DISCLOSE MEANING OF CERTAIN TERMS				
	2/15	3/03	CONCUR	3/3	VOTE: 18-0		3/03
SB0187	BROWN, BOB		AUTOMATED REPORTING AND ACCOUNTING FOR VIDEO GAMBLING MACHINES				
	2/22	3/10	CONCUR AS AMENDED	3/15	VOTE: 11-7		3/16
SB0196	GAGE, DELWYN		REPEAL THE MONTANA RATEMAKING ACT				
	1/30	2/07	CONCUR	2/7	VOTE: 18-0		2/08
SB0201	BURNETT, JIM		AUTHORIZE DRUG & ALCOHOL TEST OF EMPLOYEE INVOLVED IN WORK-RELATED ACCIDENT				
	2/15	3/02	CONCUR AS AMENDED	3/7	VOTE: 18-0		3/07
SB0216	BECK, TOM		ESTABLISH CONTINUING EDUCATION REQUIREMENTS FOR CERTAIN INSURANCE PRODUCERS				
	2/15	3/03	CONCUR	3/3	VOTE: 18-0		3/03
SB0224	CHRISTIAENS, CHRIS		REVISE REAL ESTATE BROKER AGENCY LAW & REQUIRE DISCLOSURE OF AGENT OBLIGAT'S				
	2/15	3/08	CONCUR AS AMENDED	3-14	VOTE: 18-0		3/16
	VAN VALKENBURG, FRED		PROHIBIT PARTNER CANCELLING INSURANCE WITHOUT MAJORITY OF PARTNERS CONSENT				

22

SENATE BILL NO. 224

INTRODUCED BY CHRISTIAENS, BOHLINGER, TOEWS, KLAMPE, SPRAGUE, BARNHART, WELDON,
FORRESTER, BARTLETT, SQUIRES, WILSON, HERTEL, KEATING, T. NELSON, GAGE

A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING THE RELATIONSHIPS AVAILABLE BETWEEN REAL
ESTATE BROKERS OR SALESPERSONS AND BUYERS OR SELLERS IN REAL ESTATE TRANSACTIONS;
ESTABLISHING THE OBLIGATIONS OWED BY REAL ESTATE BROKERS OR SALESPERSONS TO BUYERS
OR SELLERS IN REAL ESTATE TRANSACTIONS; REQUIRING REAL ESTATE BROKERS AND
SALESPERSONS TO PROVIDE BUYERS AND SELLERS WITH AGENCY DISCLOSURE STATEMENTS
REGARDING AGENCY RELATIONSHIPS BETWEEN REAL ESTATE BROKERS OR SALESPERSONS AND
BUYERS OR SELLERS IN A REAL ESTATE TRANSACTION; AND AMENDING SECTIONS 37-51-102 AND
37-51-321, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

THERE ARE NO CHANGES IN THIS BILL AND IT WILL
NOT BE REPRINTED. PLEASE REFER TO SECOND
READING COPY (YELLOW) FOR COMPLETE TEXT.

SENATE BILL NO. 224

INTRODUCED BY CHRISTIAENS, BOHLINGER, TOEWS, KLAMPE, SPRAGUE, BARNHART, WELDON,
FORRESTER, BARTLETT, SQUIRES, WILSON, HERTEL, KEATING, T. NELSON, GAGE

A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING THE RELATIONSHIPS AVAILABLE BETWEEN REAL
ESTATE BROKERS OR SALESPERSONS AND BUYERS OR SELLERS IN REAL ESTATE TRANSACTIONS;
ESTABLISHING THE OBLIGATIONS OWED BY REAL ESTATE BROKERS OR SALESPERSONS TO BUYERS
OR SELLERS IN REAL ESTATE TRANSACTIONS; REQUIRING REAL ESTATE BROKERS AND
SALESPERSONS TO PROVIDE BUYERS AND SELLERS WITH AGENCY DISCLOSURE STATEMENTS
REGARDING AGENCY RELATIONSHIPS BETWEEN REAL ESTATE BROKERS OR SALESPERSONS AND
BUYERS OR SELLERS IN A REAL ESTATE TRANSACTION; AND AMENDING SECTIONS 37-51-102 AND
37-51-321, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 37-51-102, MCA, is amended to read:

"37-51-102. Definitions. Unless the context requires otherwise, in this chapter, the following
definitions apply:

(1) "Account" means the real estate recovery account established in 37-51-501.

(2) (a) "Adverse material fact" means a fact that should be recognized by a broker or salesperson
as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real
property and may be a fact that:

(i) materially affects the value, affects structural integrity, or presents a documented health risk
to occupants of the property; or

(ii) materially affects the buyer's ability or intent to perform the buyer's obligations under a
proposed or existing contract.

(b) The term does not include the fact that an occupant of the property has or has had AIDS or
another communicable disease or that the property was the site of a suicide or felony.

~~(3)~~(3) "Board" means the board of realty regulation provided for in 2-15-1867.

~~(3)~~(4) "Broker" includes an individual who:

1 (a) for another or for valuable consideration or who with the intent or expectation of receiving
2 valuable consideration negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange, or
3 lease of real estate or of the improvements on real estate or collects rents or attempts to collect rents;

4 (b) is employed by or on behalf of the owner or lessor of real estate to conduct the sale, leasing,
5 subleasing, or other disposition of real estate for consideration;

6 (c) engages in the business of charging an advance fee or contracting for collection of a fee in
7 connection with a contract by which the individual undertakes primarily to promote the sale, lease, or other
8 disposition of real estate in this state through its listing in a publication issued primarily for this purpose or
9 for referral of information concerning real estate to brokers;

10 (d) makes the advertising, sale, lease, or other real estate information available by public display
11 to potential buyers and who aids, attempts, or offers to aid, for a fee, any person in locating or obtaining
12 any real estate for purchase or lease;

13 (e) aids or attempts or offers to aid, for a fee, any person in locating or obtaining any real estate
14 for purchase or lease;

15 (f) receives a fee, commission, or other compensation for referring to a licensed broker or ~~salesman~~
16 salesperson the name of a prospective buyer or seller of real property; or

17 (g) advertises or represents to the public that the individual is engaged in any of the activities
18 referred to in subsections ~~(3)(a)~~ (4)(a) through ~~(3)(f)~~ (4)(f).

19 ~~(4)(5)~~ "Broker associate" means a broker who associates, as an employee or independent
20 contractor, with a broker owner and does not own an interest in a real estate firm.

21 ~~(5)(6)~~ "Broker owner" means a broker who owns or has a financial interest in a real estate firm.

22 (7) "Buyer" means a person who is interested in acquiring an ownership interest in real property
23 or who has entered into an agreement to acquire an interest in real property. The term includes tenants
24 or potential tenants with respect to leases or rental agreements of real property.

25 (8) "Buyer agent" means a broker or salesperson who, pursuant to a written buyer broker
26 agreement, is acting as the agent of the buyer in a real estate transaction and includes a buyer subagent
27 and an in-house buyer agent designate.

28 (9) "Buyer broker agreement" means a written agreement in which a prospective buyer employs
29 a broker to locate real estate of the type and with terms and conditions as designated in the written
30 agreement.

1 (10) "Buyer subagent" means a broker or salesperson who, pursuant to an offer of a subagency,
2 acts as the agent of a buyer.

3 ~~(6)~~(11) "Department" means the department of commerce provided for in Title 2, chapter 15, part
4 18.

5 (12) "Dual agent" means a broker or salesperson who, pursuant to a written listing agreement or
6 buyer broker agreement or as a buyer or seller subagent, acts as the agent of both the buyer and seller with
7 written authorization as provided in [section 4]. An in-house buyer or seller agent designate may not be
8 considered a dual agent.

9 ~~(7)~~(13) "Franchise agreement" means a contract or agreement by which:

10 (a) a franchisee is granted the right to engage in business under a marketing plan prescribed in
11 substantial part by the franchisor;

12 (b) the operation of the franchisee's business is substantially associated with the franchisor's
13 trademark, trade name, logotype, or other commercial symbol or advertising designating the franchisor; and

14 (c) the franchisee is required to pay, directly or indirectly, a fee for the right to operate under the
15 agreement.

16 (14) "In-house buyer agent designate" means a broker associate or salesperson employed by or
17 associated as an independent contractor with a broker owner and designated by the broker owner as the
18 exclusive agent for a buyer for a designated transaction and who may not be considered to be acting for
19 other than the buyer with respect to the designated transaction.

20 (15) "In-house seller agent designate" means a broker associate or salesperson employed by or
21 associated as an independent contractor with a broker owner and designated by the broker owner as the
22 exclusive agent for a seller for a designated transaction and who may not be considered to be acting for
23 other than the seller with respect to the designated transaction.

24 (16) "Listing agreement" means a written agreement between a seller and broker for the sale of
25 real estate, with the terms and conditions set out in the agreement.

26 (17) "Negotiations" means:

27 (a) efforts to act as an intermediary between parties to a real estate transaction;

28 (b) facilitating and participating in contract discussions;

29 (c) completing forms for offers, counteroffers, addendums, and other writings; and

30 (d) presenting offers and counteroffers.

1 ~~(8)~~(18) "Person" includes individuals, partnerships, associations, and corporations, foreign and
2 domestic, except that when referring to a person licensed under this chapter, it means an individual.

3 ~~(9)~~(19) "Property manager" includes a person who for a salary, commission, or compensation of
4 any kind engages in the business of leasing, renting, subleasing, or other transfer of possession of real
5 estate belonging to others without transfer of the title to the property, pursuant to 37-51-601 and
6 37-51-602.

7 ~~(10)~~(20) "Real estate" includes leaseholds as well as any other interest or estate in land, whether
8 corporeal, incorporeal, freehold, or nonfreehold and whether the real estate is situated in this state or
9 elsewhere.

10 (21) "Real estate transaction" means the sale, exchange, or lease or grant of an option for the sale,
11 exchange, or lease of an interest in real estate and includes all communication, interposition, advisement,
12 negotiation, and contract development and closing.

13 ~~(11)~~(22) "Salesman" "Salesperson" includes an individual who for a salary, commission, or
14 compensation of any kind is associated, either directly, indirectly, regularly, or occasionally, with a real
15 estate broker to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate.

16 (23) "Seller" means a person who has entered into a listing agreement to sell real estate and
17 includes landlords who have an interest in or are a party to a lease or rental agreement.

18 (24) "Seller agent" means a broker or salesperson who, pursuant to a written listing agreement, acts
19 as the agent of a seller and includes a seller subagent and an in-house seller agent designate.

20 (25) "Seller subagent" means a broker or salesperson who, pursuant to an offer of a subagency,
21 acts as the agent of a seller.

22 (26)(a) "Statutory broker" means a broker or salesperson who assists one or more parties to a real
23 estate transaction without acting as an agent or representative of any party to the real estate transaction.

24 (b) A broker or salesperson is presumed to be acting as a statutory broker unless the broker or
25 salesperson has entered into a listing agreement with a seller or a buyer broker agreement with a buyer or
26 has disclosed, as required in this chapter, a relationship other than that of a statutory broker."

27
28 **Section 2.** Section 37-51-321, MCA, is amended to read:

29 **"37-51-321. Revocation or suspension of license -- initiation of proceedings -- grounds.** (1) The
30 board may on its own motion and shall on the sworn complaint in writing of a person investigate the

actions of a real estate broker or a real estate salesperson, subject to 37-1-101 and 37-1-121, and may revoke or suspend a license issued under this chapter when the broker or salesperson has been found guilty by a majority of the board of any of the following practices:

(a) intentionally misleading, untruthful, or inaccurate advertising, whether printed or by radio, display, or other nature, which advertising in any material particular or in any material way misrepresents any property, terms, values, policies, or services of the business conducted. A broker who operates under a franchise agreement engages in misleading, untruthful, or inaccurate advertising if in using the franchise name, the broker does not incorporate the broker's own name in the franchise name or logotype or does not conspicuously display, on the broker's letterhead and other printed materials available to the public, a statement that the broker's office is independently owned and operated and the trade name, if any, by which the office is known. The board may not adopt advertising standards more stringent than those set forth in this subsection.

(b) making any false promises of a character likely to influence, persuade, or induce;

(c) pursuing a continued and flagrant course of misrepresentation or making false promises through agents or salespersons or any medium of advertising or otherwise;

(d) use of the term "realtor" by a person not authorized to do so or using another trade name or insignia of membership in a real estate organization of which the licensee is not a member;

(e) failing to account for or to remit money coming into the broker's or salesperson's possession belonging to others;

(f) accepting, giving, or charging an undisclosed commission, rebate, or profit on expenditures made for a principal;

(g) acting in a dual capacity of broker and undisclosed principal in a transaction, including failing to disclose in advertisements for real property the person's dual capacity as broker and principal;

(h) guaranteeing, authorizing, or permitting a person to guarantee future profits ~~which~~ that may result from the resale of real property;

(i) offering real property for sale or lease without the knowledge and consent of the owner or the owner's authorized agent or on terms other than those authorized by the owner or the owner's authorized agent;

(j) inducing a party to a contract of sale or lease to break the contract for the purpose of substituting a new contract with another principal;

1 (k) accepting employment or compensation for appraising real property contingent on the reporting
2 of a predetermined value or issuing an appraisal report on real property in which the broker or salesperson
3 has an undisclosed interest;

4 (l) negotiating a sale, exchange, or lease of real property directly with ~~an owner or lessee~~ a seller
5 or buyer if the broker or salesperson knows that the ~~owner~~ seller or buyer has a written, outstanding
6 ~~contract~~ listing agreement or buyer broker agreement in connection with the property granting an exclusive
7 agency to another broker;

8 (m) soliciting, selling, or offering for sale real property by conducting lotteries for the purpose of
9 influencing a purchaser or prospective purchaser of real property;

10 (n) representing or attempting to represent a real estate broker other than the employer without
11 the express knowledge or consent of the employer;

12 (o) failing voluntarily to furnish a copy of a written instrument to a party executing it at the time
13 of its execution;

14 (p) paying a commission in connection with a real estate sale or transaction to a person who is not
15 licensed as a real estate broker or real estate salesperson under this chapter;

16 (q) intentionally violating a rule adopted by the board in the interests of the public and in conformity
17 with this chapter;

18 (r) failing, if a salesperson, to place, as soon after receipt as is practicably possible, in the custody
19 of the salesperson's registered broker, deposit money or other money entrusted to the salesperson in that
20 capacity by a person;

21 (s) demonstrating unworthiness or incompetency to act as a broker or salesperson; or

22 (t) conviction of a felony.

23 (2) (a) It is unlawful for a broker or salesperson to openly advertise property belonging to others,
24 whether by means of printed material, radio, television, or display or by other means, unless the broker or
25 salesperson has a signed listing agreement from the owner of the property. The listing agreement must be
26 valid as of the date of advertisement.

27 (b) The provisions of subsection (2)(a) do not prevent a broker or salesperson from including
28 information on properties listed by other brokers or salespersons who will cooperate with the selling broker
29 or salesperson in materials dispensed to prospective customers.

30 (c) The license of a broker or salesperson who violates this subsection (2) may be suspended or

1 revoked as provided in subsection (1)."

2
3 **NEW SECTION. Section 3. Duties, duration, and termination of relationship between broker or**
4 **salesperson and buyer or seller.** (1) The provisions of this chapter and the duties described in this section
5 govern the relationships between brokers or salespersons and buyers or sellers and are intended to replace
6 the common law as applied to these relationships. The duties of a broker or salesperson vary depending
7 upon the relationship with a party to a real estate transaction and are as provided in this section.

8 (2) A seller's agent is obligated to the seller to:

9 (a) act solely in the best interests of the seller;

10 (b) obey promptly and efficiently all lawful instructions of the seller;

11 (c) disclose all relevant AND MATERIAL information that concerns the real estate transaction and
12 that is known to the seller's agent and not known or discoverable by the seller, unless the information is
13 subject to confidentiality arising from a prior or existing agency relationship on the part of the seller's agent;

14 (d) safeguard the seller's confidences;

15 (e) exercise reasonable care, skill, and diligence in pursuing the seller's objectives and in complying
16 with the terms established in the listing agreement;

17 (f) fully account to the seller for any funds or property of the seller that comes into the seller's
18 agent's possession; and

19 (g) comply with all applicable federal and state laws, rules, and regulations.

20 (3) A seller's agent is obligated to the buyer to:

21 (a) disclose to a buyer or the buyer's agent any adverse material facts that concern the property
22 and that are known to the seller's agent, except that the seller's agent is not required to inspect the
23 property or verify any statements made by the seller;

24 (b) act in good faith with a buyer and a buyer's agent; and

25 (c) comply with all applicable federal and state laws, rules, and regulations.

26 (4) A buyer's agent is obligated to the buyer to:

27 (a) act solely in the best interests of the buyer;

28 (b) obey promptly and efficiently all lawful instructions of the buyer;

29 (c) disclose all relevant AND MATERIAL information that concerns the real estate transaction and
30 that is known to the buyer's agent and not known or discoverable by the buyer, unless the information is

1 subject to confidentiality arising from a prior or existing agency relationship on the part of the buyer's
2 agent;

3 (d) safeguard the buyer's confidences;

4 (e) exercise reasonable care, skill, and diligence in pursuing the buyer's objectives and in complying
5 with the terms established in the buyer broker agreement;

6 (f) fully account to the buyer for any funds or property of the buyer that comes into the buyer's
7 agent's possession; and

8 (g) comply with all applicable federal and state laws, rules and regulations.

9 (5) A buyer's agent is obligated to the seller to:

10 (a) disclose any adverse material facts that are known to the buyer's agent and that concern the
11 ability of the buyer to perform on any purchase offer;

12 (b) act in good faith with a seller and a seller's agent; and

13 (c) comply with all applicable federal and state laws, rules, and regulations.

14 (6) A statutory broker is not the agent of the buyer or seller but nevertheless is obligated to them
15 to:

16 (a) disclose to:

17 (i) a buyer or a buyer's agent any adverse material facts that concern the property and that are
18 known to the statutory broker, except that the statutory broker is not required to inspect the property or
19 verify any statements made by the seller;

20 (ii) a seller or a seller's agent any adverse material facts that are known to the statutory broker and
21 that concern the ability of the buyer to perform on any purchase offer;

22 (b) exercise reasonable care, skill, and diligence putting together a real estate transaction; and

23 (c) comply with all applicable federal and state laws, rules, and regulations.

24 (7) A dual agent is obligated to a seller in the same manner as a seller's agent and is obligated to
25 a buyer in the same manner as a buyer's agent under this section, except as follows:

26 (a) a dual agent has a duty to disclose to a buyer or seller any adverse material facts that are
27 known to the dual agent, regardless of any confidentiality considerations; and

28 (b) a dual agent may not disclose the following information without the written consent of the
29 person to whom the information is confidential:

30 (i) the fact that the buyer is willing to pay more than the offered purchase price;

(ii) the fact that the seller is willing to accept less than the purchase price that the seller is asking for the property;

(iii) factors motivating either party to buy or sell; and

(iv) any information that a party indicates in writing to the dual agent is to be kept confidential.

(8)(a) The agency relationship of a buyer agent, seller agent, or dual agent continues until the earliest of the following dates:

(i) completion of performance by the agent;

(ii) the expiration date agreed to in the listing agreement or buyer broker agreement; or

(iii) the occurrence of any authorized termination of the listing agreement or buyer broker agreement.

(b) A statutory broker's relationship continues until the completion, termination, or abandonment of the real estate transaction giving rise to the relationship.

(9) Upon termination of an agency relationship, a broker or salesperson does not have any further duties to the principal, except as follows:

(a) to account for all money and property of the principal;

(b) to keep confidential all information received during the course of the agency relationship that was made confidential at the principal's direction, except for:

(i) subsequent conduct by the principal that authorizes disclosure;

(ii) disclosure required by law or to prevent the commission of a crime;

(iii) the information being disclosed by someone other than the broker or salesperson; and

(iv) the disclosure of the information being reasonably necessary to defend the conduct of the broker or salesperson, including employees, independent contractors, and subagents.

NEW SECTION. Section 4. Relationship disclosure requirements. (1) A broker or salesperson shall disclose the existence and nature of relevant agency or other relationships to the parties to a real estate transaction as provided in this section.

(2) A seller agent shall make the required relationship disclosures:

(a) to the seller at the time the listing agreement is executed or, if the seller agent is acting as a seller subagent, at the time negotiations commence; and

(b) to the buyer or buyer agent at the time negotiations commence.

1 (3) A buyer agent shall make the required relationship disclosures:

2 (a) to the buyer at the time the buyer broker agreement is executed or, if the buyer agent is acting
3 as a buyer subagent, at the time negotiations commence; and

4 (b) to the seller or seller agent at the time negotiations commence.

5 (4) A statutory broker shall make the required relationship disclosure to the buyer and seller at the
6 time negotiations commence.

7 (5) A buyer agent or seller agent who subsequently becomes a dual agent shall disclose the
8 relationship to the buyer and seller and receive their consent prior to the time or at the time that the dual
9 agency arises.

10 (6) A disclosure required by this section must be signed and dated by the party to whom the
11 disclosure is directed and by the broker or salesperson. A disclosure must contain substantially the
12 following information:

13 (a) Seller agent disclosure to the seller: "(Name of seller agent) will be representing you as your
14 agent or subagent in the sale of your property located at (address of property). Your seller agent is
15 obligated to you as enumerated below. If your seller agent is also representing a buyer who becomes
16 interested in your property, a dual agency may be created. In a dual agency relationship, the seller agent
17 is obligated to the buyer in the same way as to you. This conflict will prohibit the seller agent from
18 advocating exclusively on your behalf or the buyer's behalf and may limit the level of representation you
19 receive. If the potential for a dual agency arises, the seller agent shall provide you with a dual agent
20 disclosure. A seller agent cannot act as a dual agent without your consent and that of the buyer. This
21 consent is given by you and the buyer signing the dual agent disclosure. If you or the buyer declines to
22 give this consent, your opportunity to sell your property to that buyer may be lost.

23 Your seller agent is obligated to you as follows:

24 (1) to act solely in the best interests of the seller to the exclusion of all other interests, including
25 those of the seller agent;

26 (2) to obey promptly and efficiently all lawful instructions of the seller;

27 (3) to disclose to the seller all relevant and material information that concerns the real estate
28 transaction and that is known by the seller agent and not known by the seller, unless the information is
29 subject to confidentiality arising from a prior or existing agency relationship;

30 (4) to safeguard the seller's confidences;

1 (5) to exercise reasonable skill, care, and diligence in pursuing the seller's objectives as established
2 in the listing agreement;

3 (6) to fully account to the seller for all funds or property of the seller coming into the seller agent's
4 possession;

5 (7) to comply with all applicable federal and state laws, rules, and regulations; and

6 (8) to carry out the terms of the listing agreement."

7 (b) Seller agent disclosure to the buyer: "(Name of seller agent) is the agent of the seller with
8 respect to the seller's property located at (address of property). Although the seller agent is primarily
9 obligated to the seller, the seller agent is obligated to you as specified below.

10 A seller agent is obligated to a buyer as follows:

11 (1) to disclose to a buyer any adverse material facts that concern the property and that are known
12 to the seller agent;

13 (2) to deal in good faith with the buyer; and

14 (3) to comply with all applicable federal and state laws, rules, and regulations.

15 "Adverse material fact" means a fact that should be recognized by a broker as being of enough
16 significance as to affect a person's decision to enter into a contract to buy or sell real property and may
17 be a fact that materially affects the value or structural integrity or presents a documented health risk to
18 occupants of the property. The term may not include the fact that an occupant of the property has or has
19 had AIDS or another communicable disease or that the property was the site of a suicide or felony."

20 (c) Buyer agent disclosure to the buyer: "(Name of buyer agent) will be representing you as your
21 agent or subagent in the purchase of real property of the nature described in the buyer broker agreement.
22 Your buyer agent is obligated to you as enumerated below. If your buyer agent is also representing a seller
23 of property that you become interested in, a dual agency may be created. In a dual agency relationship,
24 the buyer agent is obligated to the seller in the same way as to you. This conflict will prohibit the buyer
25 agent from advocating exclusively on your behalf or on the seller's behalf and may limit the level of
26 representation you receive. If the potential for a dual agency arises, the buyer agent shall provide you with
27 a dual agent disclosure. A buyer agent cannot act as a dual agent without your consent and that of the
28 seller. This consent is given by you and the seller signing the dual agent disclosure. If you or the seller
29 declines to give this consent, your opportunity to acquire the seller's property may be lost.

30 Your buyer agent is obligated to you as follows:

1 (1) to act solely in the best interests of the buyer to the exclusion of all other interests, including
2 those of the buyer agent;

3 (2) to obey promptly and efficiently all lawful instructions of the buyer;

4 (3) to disclose to the buyer all relevant and material information that concerns the real estate
5 transaction and that is known by the buyer agent and not known by the buyer, unless the information is
6 subject to confidentiality arising from a prior or existing agency relationship;

7 (4) to safeguard the buyer's confidences;

8 (5) to exercise reasonable skill, care, and diligence in pursuing the buyer's objectives as established
9 in the buyer broker agreement;

10 (6) to fully account to the buyer for all funds or property of the buyer coming into the buyer
11 agent's possession;

12 (7) to comply with all applicable federal and state laws, rules, and regulations; and

13 (8) to carry out the terms of the buyer broker agreement."

14 (d) Buyer agent disclosure to the seller: "(Name of buyer agent) is representing the buyer with
15 respect to the seller's property located at (address of property). Although the buyer agent is primarily
16 obligated to the buyer, the buyer agent is obligated to you as specified below.

17 A buyer agent is obligated to a seller as follows:

18 (i) to disclose to a seller any adverse material facts that concern the ~~property~~ ABILITY OF THE
19 BUYER TO PERFORM ON ANY PURCHASE OFFER and that are known to the buyer agent;

20 (ii) to deal in good faith with the seller; and

21 (iii) to comply with all applicable federal and state laws, rules, and regulations.

22 "Adverse material fact" means a fact that should be recognized by a broker as being of enough
23 significance as to affect a person's decision to enter into a contract to buy or sell real property and may
24 be a fact that materially affects the buyer's ability or intent to perform the buyer's obligations under a
25 proposed or existing contract."

26 (e) Statutory ~~agent~~ BROKER disclosure to the buyer and seller: "(Name of statutory broker) will
27 be involved as a statutory broker with respect to the purchase and sale of real property located at
28 (address). A statutory broker is not the agent of the buyer or seller but is only assisting the parties in
29 executing a sale of the property. A statutory broker is obligated to the buyer and seller as specified below.

30 A statutory broker is obligated to the parties as follows:

1 (1) to disclose to a buyer any adverse material fact that concerns the property and that is known
2 to the statutory broker and not known to the buyer. However, the statutory broker is not required to
3 conduct an independent inspection of the property or to verify any representation made by the seller.

4 (2) to disclose to the seller any adverse material fact that concerns the buyer's intent or ability to
5 perform on the purchase offer and that is known to the statutory broker and not known to the seller;

6 (3) to exercise reasonable skill, care, and diligence in facilitating the purchase and sale of the
7 property; and

8 (4) to comply with all applicable federal and state laws, rules, and regulations.

9 "Adverse material fact" means a fact that should be recognized by a broker as being of enough
10 significance as to affect a person's decision to enter into a contract to buy or sell real property. It may be
11 a fact that materially affects the value or structural integrity or presents a documented health risk to
12 occupants of the property, but may not include the fact that an occupant of the property has or has had
13 AIDS or another communicable disease or that the property was the site of a suicide or felony, or it may
14 be a fact that materially affects the buyer's ability or intent to perform the buyer's obligations under a
15 proposed or existing contract."

16 (f) Dual agent disclosure to the buyer and seller: "(Name of dual agent) is the agent of the buyer
17 interested in purchasing the property and of the seller of the property located at (address of property). A
18 dual agent is obligated to the buyer and seller as follows:

19 (1) to act solely in the best interests of the buyer and seller to the exclusion of all other interests
20 including the dual agent's;

21 (2) to obey promptly and efficiently all lawful instructions of the buyer and seller;

22 (3) to disclose to the buyer and seller all relevant and material information that concerns the real
23 estate transaction and that is known by the dual agent and not known by the buyer or seller, unless the
24 information is subject to confidentiality arising from a prior or existing agency relationship;

25 (4) to exercise reasonable skill, care, and diligence in pursuing the buyer's and seller's objectives
26 as established in the listing agreement and buyer broker agreement;

27 (5) to fully account to the buyer and seller for all funds or property of the buyer AND SELLER
28 coming into the dual agent's possession;

29 (6) to comply with all applicable federal and state laws, rules, and regulations;

30 (7) to carry out the terms of the buyer broker agreement; and

(8) to safeguard the buyer's and seller's confidences, ~~except that~~ SUBJECT TO the obligation to disclose ~~relevant and material information concerning the real estate transaction to either the buyer or the seller supersedes any confidentiality requirement. However, the~~ TO A BUYER OR A SELLER ANY ADVERSE MATERIAL FACTS THAT ARE KNOWN TO THE DUAL AGENT, REGARDLESS OF ANY CONFIDENTIALITY CONSIDERATIONS. THE following may not be disclosed without the written consent of the party to whom the information is confidential:

- (a) that the buyer is willing to pay more than the buyer has offered for the property;
- (b) that the seller is willing to accept less than the asking price for the property;
- (c) factors motivating the buyer to buy or the seller to sell; and
- (d) any other information that a party specifically indicates in writing to the dual agent is to be kept confidential and that is not ~~relevant and material information concerning the real estate transaction~~ AN ADVERSE MATERIAL FACT.

"Adverse material fact" means a fact that should be recognized by a broker as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property. It may be a fact that materially affects the value or structural integrity or presents a documented health risk to occupants of the property, but may not include the fact that an occupant of the property has or has had AIDS or another communicable disease or that the property was the site of a suicide or felony, or it may be a fact that materially affects the buyer's ability or intent to perform the buyer's obligations under a proposed or existing contract.

Upon signing this disclosure form, the buyer and seller acknowledge that they understand the obligations owed by a dual agent to them and consent to the dual agent representing them as a dual agent."

(7) A written disclosure that complies with the provisions of this section must be construed as a sufficient disclosure of the relationship between a broker or salesperson and a buyer or seller and must be construed as conclusively establishing the obligations owed by a broker or salesperson to a buyer or seller in a real estate transaction.

NEW SECTION. Section 5. Vicarious liability. (1) A party to a real estate transaction is not liable for a misrepresentation made by the party's agent or subagent unless:

- (a) the party has actual knowledge of the misrepresentation; or

1 (b) the agent or subagent is repeating a misrepresentation made by the party.

2 (2) A broker is not liable for a misrepresentation made by the broker's broker associate or subagent

3 unless:

4 (a) the broker has actual knowledge of the misrepresentation;

5 (b) a broker associate making the misrepresentation is an employee of the broker and not an
6 independent contractor or subagent; or

7 (c) a broker associate or subagent is repeating a misrepresentation made by the broker.

8 (3) An agent is not liable for a misrepresentation made by the principal unless the agent has
9 ACTUAL knowledge of the misrepresentation.

10
11 **NEW SECTION. Section 6. Name change -- directions to code commissioner.** In Title 37, chapter
12 51, or in material enacted by the 54th legislature that is to be codified in Title 37, chapter 51, wherever
13 the name "salesman" appears, the code commissioner is directed to change the name to "salesperson".

14
15 **NEW SECTION. Section 7. Codification instruction.** [Sections 3 through 5] are intended to be
16 codified as an integral part of Title 37, chapter 51, part 3, and the provisions of Title 37, chapter 51, part
17 3, apply to [sections 3 through 5].

18 -END-

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON BUSINESS & LABOR

Call to Order: By **CHAIRMAN BRUCE T. SIMON**, on March 8, 1995, at 8:00 A.M.

ROLL CALL

Members Present:

Rep. Bruce T. Simon, Chairman (R)
Rep. Norm Mills, Vice Chairman (Majority) (R)
Rep. Robert J. "Bob" Pavlovich, Vice Chairman (Minority) (D)
Rep. Vicki Cocchiarella (D)
Rep. Charles R. Devaney (R)
Rep. Jon Ellingson (D)
Rep. Alvin A. Ellis, Jr. (R)
Rep. David Ewer (D)
Rep. Rose Forbes (R)
Rep. Jack R. Herron (R)
Rep. Bob Keenan (R)
Rep. Don Larson (D)
Rep. Rod Marshall (R)
Rep. Jeanette S. McKee (R)
Rep. Karl Ohs (R)
Rep. Paul Sliter (R)
Rep. Carley Tuss (D)
Rep. Joe Barnett (R)

Members Excused: None.

Members Absent: None.

Staff Present: Stephen Maly, Legislative Council
Alberta Strachan, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 335, SB 224, SB 329, SB 233, SB 374
Executive Action: SB 151, HB 554, SB 335, SB 233, SB 329

HEARING ON SB 335

Opening Statement by Sponsor:

SEN. KEN MILLER, SD 11, Yellowstone County, said this bill was an act revising the Montana Retail Installment Sales Act and

HEARING ON SB 224Opening Statement by Sponsor:

SEN. B.F. CHRISTIAENS, SD 23, Cascade County, said this bill was an act defining the relationships available between real estate brokers or salespersons and buyers or sellers in real estate transactions; establishing the obligations owed by real estate brokers or salespersons to buyers or sellers in real estate transactions and requiring real estate brokers and salespersons to provide buyers and sellers with agency disclosure statements regarding agency relationships between real estate brokers or salespersons and buyers or sellers in a real estate transaction. He also supplied testimony on the talking points and business relationships in real estate transactions. **EXHIBIT 2**

Proponents' Testimony:

Colin Bangs, Chairman, Montana Association of Realtors Legislative Committee, said one of the things he enjoyed about selling real estate was that he could converse with a buyer and find out exactly what the buyer really wanted in real estate. The whole marketplace was available to pick from through multiple listing services, through cooperation between agents. Anything that was for sale was a part of the inventory. Sometimes months are spent with a buyer before he decides on a purchase. One of the fallacies of this is the law of agency recognized only a seller's agent. The person listing the property was the sellers agent. The broker who sold the property was considered to be a sub-agent of the seller, therefore, by law, was representing the seller. That was not real. It is impossible to represent a seller that the sub-agent had never met before. New laws are being established to recognize the fact that in a lot of cases there are two agents, one representing the buyer and the other representing the seller. This bill makes legal what has been happening for years before.

Al Littler, Broker-Owner, Prudential Corporate Realtors, Billings, discussed the Tag Report. Realtors have worked together in the best interest of the principles. There was a multiple listing system. In the 1970s the Federal Trade Commission tried to declare that multiple listing systems was a restrained trade. It was indicated there was a monopoly on the market. Realtors are expert in the process so they are consulted for various advice and services. In the past a realtor was considered an agent for the seller or sub-agent for the seller. There developed a controversy among the national associations as to whether a realtor should be the seller's agent or a buyer's agent. Agencies were limited. A Presidential Advisory Committee was developed which reported that realtors must be an agent for the buyer, an agent for the seller or a dual agent. There was no other business relationship that was allowed. That did not fit the practice of real estate. Many states began to pass legislation that allowed realtors to develop business

relationships and get compensation for those relationships as per contract or agreement. The National Association of Realtors appointed a second committee to study the issues. Technology has become so advanced. Buyers and sellers expect something different from their realtors. The business climate has begun to change and the old system does not fit today with business relationships changing.

Zane Sullivan, Attorney, Montana Association of Realtors, said they were involved in drafting the bill and that it adds clarity and equality to the existing real estate practice. He then explained the changes in the bill.

Vicky Hammond, President, Montana Association of Realtors, Missoula, said she supported this bill.

Howard Sumner, President, Montana Association of Realtors, Billings, said he spoke in favor of the bill.

P.C. Musgrove, President, Montana Association of Realtors, Kalispell, said he supported the bill.

Charles Hamway, said he supported this bill.

Carl Cunzing, President, Legislative Committee, said he supported this bill.

Judy Walberg, Past President, County Association of Realtors of Missoula, supported the bill.

Marilyn Hoblet, County Association of Realtors of Missoula and Legislative Committee, supported the bill.

Dixie Dalton, President, Missoula County Association of Realtors supported the bill.

Robert Leech, Vice Chairman, Legislative Committee, supported the bill and it is essential in the way they do business in real estate.

Tim Evans, State Director, Montana Association of Realtors, encouraged support of this legislation.

John Schontz, Montana Association of Realtors said this bill requires a coordinating bill. They would support both bills. He then discussed amendments.

Opponents' Testimony:

Russell Hill, Montana Trail Lawyers Association, said it was difficult to stand as an opponent after standing as a conditional proponent in the Senate. This is a good faith effort to clarify a fairly confusing area of the law. This bill contains errors of co-omission and errors of omission. That is important in this

bill. He then discussed the written disclosure statement and the dramatic area of common law.

Don Snavely, Attorney, said part of his practice is devoted to representing consumers and real estate brokers involving professional negligence claims. He also supplied copies of the MCA sections regarding licensees. EXHIBIT 3

Questions From Committee Members and Responses:

REP. DON LARSON asked why there was so much representation from realtors from Missoula. Mr. Litler said they were here for a dual purpose and happened to be in Helena. REP. LARSON asked how many other states had adopted this model legislation. Mr. Litler said many states developed this legislation and they were Utah, Colorado, Georgia, Florida and Maine and others were in the process of doing the same.

TAPE 1, SIDE B

REP. LARSON said there were allegations in the testimony on the change in the common law. Mr. Hill said section 3 contained in the provisions are intended to replace the common law as applied to common relationships. When a bill is in effect it works in conjunction with the common law. If there is an inconsistency, the statute takes precedence. The committee should consider this will be the only law concerning that. It is an honest attempt to clarify what the duties should be.

REP. LARSON said he was interested in the new relationship that has been established by this bill which creates a statutory broker relationship where the broker is acting as a contract agent between the buyer and seller. He asked if that will be established by a written document which will specify the obligations and duties of the broker. Mr. Sullivan said he hoped it would be established by a written document. There is not a mandate that it be established. It is intended to be a relationship where the parties agree on what is to be done by the licensee in that particular instance.

REP. EWER said the problems were not where the current industry is regarding the relationships to change. Mr. Sullivan said a person should be able to buy property with some degree of assurance that it is what they expected it to be. That is what a buyer's representative is supposed to do. Since the early 1950s there have been seller representatives and sub-agents of sellers and nobody represented the buyer. This type of potential existed. Buyer representation has come to the state. REP. EWER questioned the responsibility for disclosure to the buyers. Mr. Sullivan said this bill does not change that agents direct responsibility to the buyer as it currently exists. The liability section changes the passing of information. REP. EWER asked if the presidential study will parallel the recommendations. He then requested a copy of that document for

the committee for review. **Mr. Sullivan** said these items were contained in the new bill and a copy will be provided for the committee.

REP. KARL OHS asked if a financial statement would be required. **Mr. Sullivan** said there was not a duty to investigate the buyer, but if the buyer's representative knows of some information such as a pending bankruptcy or previous bankruptcy it would require that information be disclosed to the seller.

REP. ALVIN ELLIS asked how much responsibility by the realtor is required. **Mr. Sullivan** said he was not sure the person should be responsible for any accurate information unless they have knowledge of false information.

REP. JON ELLINGSON asked if the purchaser has entered into an agreement with a buyer's agent and the buyer makes an inquiry of certain conditions on the sale of a property, does the buyer's agent have a duty to do anything other than inquire of the seller's agent. **Mr. Sullivan** said there is no liability for the buyer's agent passing along information but he did not agree that this bill alleviates the need for the buyer's agent to do their own homework within the parameters of their licensing capability. It does not report to make them obligated to conduct soil analysis, etc.

REP. CARLEY TUSS asked if it were a fair characterization if an investigation regarding basic information be done. **Mr. Snavely** said that was not a fair characterization. The cases indicated were buyer's raising issues. The law does not suggest the broker must inspect anything. When the buyer raises an issue and the agent passes on information regarding verification, that is then the duty to investigate because it is important to the buyer because that buyer has raised the question. There are also situations where it is so basic to the property.

CHAIRMAN SIMON questioned the term AIDS in the bill. **Mr. Sullivan** said this is an item the agent is not obligated to disclose as being a material condition to acknowledge the former occupant had AIDS or is HIV=positive. **CHAIRMAN SIMON** said AIDS is a disease which is known as the Acquired Immune Deficiency Syndrome. In the bill it is referred to as "AIDS" and in the context of the real law it is undetermined what AIDS is. **Mr. Sullivan** said that is a repetition of the existing language. **CHAIRMAN SIMON** said this was the law. It is unusual to single out a particular disease in real estate law. **Mr. Sullivan** said he may be correct but the Board of Realty Regulation was responding to what was understood to be a non-discrimination requirement. The licensees were not to discriminate against people who had that disease.

Closing by Sponsor:

The sponsor closed.

HEARING ON SB 329

Opening Statement by Sponsor:

SEN. MIGNON WATERMAN, SD 26, Lewis and Clark County, said this bill was an act revising certain provisions of long-term health care insurance; prohibiting the issuance of a refund to a person who is not the owner of the policy; increasing from ten to thirty days the period during which a dissatisfied consumer may return a long-term care insurance policy and receive a refund of the premium; requiring that policies with nonforfeiture benefits be offered; requiring appropriate sale criteria to accompany each application for a long-term care policy and allowing the insurance commissioner to adopt rules pertaining to nonforfeiture benefits and appropriate sale criteria.

CHAIRMAN SIMON relinquished the chair to VICE CHAIRMAN PAVLOVICH.

Proponents' Testimony:

Frank Coty, Deputy Insurance Commissioner, said they supported this bill. Years ago there was trouble in the medical supplement market.

Bill Olson, American Association of Retired People, said long-term care insurance is beginning to play a more and more important part in the insurance field. All of the amendments are good and they supported this bill.

Edmund Caplis, Executive Director, Montana Senior Citizens Association, said they support this bill and believe that this bill tightens up the market and allows older Montanans to become better consumers of long-term care insurance.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

None.

Closing by Sponsor:

The sponsor closed.

HOUSE OF REPRESENTATIVES

Business and Labor

ROLL CALL

DATE 3-8-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bruce Simon, Chairman	X		
Rep. Norm Mills, Vice Chairman, Majority	X		
Rep. Bob Pavlovich, Vice Chairman, Minority	X		
Rep. Joe Barnett	X		
Rep. Vicki Cocchiarella	X		
Rep. Charles Devaney	X		
Rep. Jon Ellingson	X		
Rep. Alvin Ellis, Jr.	X		
Rep. David Ewer	X		
Rep. Rose Forbes	X		
Rep. Jack Herron	X		
Rep. Bob Keenan	X		
Rep. Don Larson	X		
Rep. Rod Marshall	X		
Rep. Jeanette McKee	X		
Rep. Karl Ohs	X		
Rep. Paul Sliter	X		
Rep. Carley Tuss	X		

Business Relationships in Real Estate Transactions

The current law governing real estate licensee relationships with buyers and sellers of property is antiquated. Furthermore, the current law is the result of a scattering of many small amendments to the status over a period of many years. For example, Montana law does not clearly allow a licensee to represent a buyer in a real estate transaction; the licensee working with the buyer technically represents the seller unless a licensee/buyer written agreement is actually signed.

The real estate industry proposes legislation that will:

EXHIBIT 2
DATE 3-8-95
HB SB224

- (1) Modernize the law to meet many of the current practices.
- (2) Clarify for consumers what a licensee can and cannot do on behalf of a buyer or seller.
- (3) Require that a licensee fully disclose to each consumer the kinds of representation that can be offered to a consumer and fully disclose to the consumer what each representation entails.
- (4) Places obligations on a licensee even if the consumer chooses not to sign a written agreement.

The legislation clarifies in the law the types of business relationship that consumers generally ask of licensee. **IMPORTANTLY**, the bill will require that the licensee fully disclose to the consumer the possible relationships to the extent that the consumer understands the relationships and makes an enlightened choice.

- (1) The classic licensee/seller agreement is, of course, where the licensee works for the seller. The licensee will have to disclose the relationship to prospective buyers.
- (2) Many buyers want licensees to represent them in a transaction. The bill clearly established the perimeters in which licensee can represent a buyer in a transaction. The licensee will have to disclose the relationship to prospective sellers.
- (3) At times a real estate office will contract to sell a property and represent the buyer (rather than one office listing the property on behalf of the seller and a second office showing the property to buyers). The bill will permit the office to appoint a licensee to represent the interests of the buyer and a licensee to represent the interests of the seller, thus assuring that both buyers and sellers have a professional assist them with their concerns in the transaction. This dual business relationship must be disclosed and agreed to by the buyer or seller.
- (4) The bill assures that an unsuspecting consumer/seller is not liable for false statements made by a licensee and visa-versa.
- (5) Many consumers do not want a formal or written business relationship with a licensee. The bill allows for such a relationship and clearly holds the licensee responsible to treat all parties to the transaction in an honest manner.

DATE 3-8-95
HB 56224

8.416

COMMERCE

8.58.416 LOAN OF THE BOARD'S LIBRARY MATERIALS is hereby repealed. (History: Sec. 37-51-203, MCA; IMP, Sec. 37-51-131, MCA, Eff. 12/31/72; TRANS, from Dept. of Prof. & Occup. Lic., C. 274, L. 1981, Eff. 7/1/81; REP, 1981 MAR p. 1613, Eff. 11/26/81.)

8.58.417 FRANCHISING REQUIREMENTS is hereby repealed. (History: Sec. 37-51-203, MCA; IMP, Sec. 76-4-1201, MCA; NEW, 78 MAR p. 1632, Eff. 7/1/78; AMD, 1979 MAR p. 848, Eff. 1/17/79; TRANS, from Dept. of Prof. & Occup. Lic., C. 274, L. 1981, Eff. 7/1/81; AMD, 1981 MAR p. 1613, Eff. 11/26/81; REP, 1990 MAR p. 1156, Eff. 6/15/90.)

8.58.418 INVESTIGATIONS COMMITTEE (1) For the purposes of investigating the actions of a licensee or license applicant, the board may appoint a fact finding committee to assist in determining whether there is probable cause to believe that a statute or rule has been violated by a licensee, or that an application should be denied.

(2) The function of this committee is to analyze licensee's actions even when no complaint has been filed and further to assist the public in determining the validity of a complaint. The committee shall make recommendations to the board relative to cause for a formal hearing. (History: Sec. 37-1-131, 37-51-203, MCA; IMP, Sec. 37-51-202, 37-51-322, MCA, Eff. 12/31/72; TRANS, from Dept. of Prof. & Occup. Lic., C. 274, L. 1981, Eff. 7/1/81; AMD, 1990 MAR p. 1156, Eff. 6/15/90.)

8.58.419 GROUNDS FOR LICENSE DISCIPLINE - GENERAL PROVISIONS - UNPROFESSIONAL CONDUCT (1) In any transaction in which a licensee is involved as a licensee or as a party, has held himself or herself out as a licensee, or in which any party has reasonably relied on a licensee's status as a licensee, violation of any statute or rule administered by the board may be considered by the board in determining whether or not the licensee:

(a) has violated section 37-51-321 (19), MCA, by "demonstrating his unworthiness or incompetency to act as a broker or salesman"; and/or

(b) has violated section 37-51-321(7), MCA, by "intentionally violating a rule adopted by the board in the interest of the public and in conformity with this act".

(2) If the board determines that a licensee has committed an act in such fashion that a statute or rules administered by the board has been violated, such act shall be deemed an act against the interest of the public for which the board may reprimand, suspend, or revoke the license held by the licensee or take any other action permitted by law.

(3) In addition to all other provisions contained in the statutes and rules administered by the board, particularly

REALTY REGULATION

8.58.419

section 37-51-321, MCA, (statutory grounds for license discipline) failure to comply with any of the following shall constitute an act against the interest of the public:

(a) Licensees may act as the agent of more than one principal in the same transaction if the licensee reasonably believes that the duties owed to one principal will not directly conflict with the duties owed to the other in such fashion that adverse consequences are likely to result, and unless such principal consents after full disclosure by the licensee.

(b) Licensees shall disclose in writing to parties to the transaction the existence and nature of the existing agency relationship no later than when an offer is prepared in a transaction.

(c) Licensees shall maintain a level of knowledge customary for licensees of this state, including laws and rules administered by the board, and shall not violate laws and rules affecting any transaction in which he or she acts.

(d) Licensees shall not engage in activities that constitute the practice of law.

(e) Licensees shall recommend that legal counsel be obtained when the interests of any party require it.

(f) Licensees shall recommend that the merchantability of title to property be determined when the interests of any party reasonably require it.

(g) Licensees, prior to engaging the services of any attorney, title company, appraiser, escrow agent, insurance agent, or other like person or entity, on behalf of a principal, third party, or other person, shall inform the person obligated to pay for the services and obtain consent from that person;

(h) Licensees, in engaging or recommending the services of an attorney, title company, appraiser, escrow agent, or other like person or entity, on behalf of a principal third party, or other person, shall disclose any family relationship, financial relationship and/or financial interest that the licensee or real estate agency with which the licensee is associated may have in that person or entity being engaged or recommended.

(i) Licensees shall endeavor to ascertain all pertinent facts concerning every property in any transaction in which the licensee acts, so that the licensee may fulfill the obligation to avoid error, exaggeration, misrepresentation, or concealment of pertinent facts.

(j) Licensees who have listed property shall make a prompt, reasonable, visual inspection of any property listed.

(k) Licensees, when entering into a listing agreement shall make a prompt effort to verify that the principal listing the property is the owner or is authorized by the owner to list the property. The licensee may, but is not required to, conduct a title search or obtain a title report at the initial listing.

(l) Licensees shall disclose to principals and third parties all material facts concerning the property of which the licensee has actual knowledge regarding the property, provided that the fact that an occupant of the property has had AIDS or other communicable disease, or that the property was the site of a suicide, homicide, or other felony shall not be considered a material fact.

(m) The licensee or agency in advertising shall be especially careful to present a true picture and shall not advertise without disclosing his or her name and identity as a real estate licensee or real estate agency. Such disclosure shall be required whenever the licensee or agency negotiates or attempts to negotiate the listing, sale, purchase or exchange of real estate which belongs to the licensee, the agency, or the principal.

(n) The licensee or agency in advertising, when under a franchise agreement, shall incorporate his or her own name or agency name, other than that of the franchise, and state that the business is independently owned and operated.

(o) Licensees shall act to preserve and maintain that good repute, honesty, trustworthiness, and competency to transact business in a manner to safeguard the interests of the public as is required to obtain a license.

(p) Licensees shall not falsify documents, place signatures on documents without authority, or commit any act of forgery, fraud, misrepresentation, deception, misappropriation, conversion, theft or any other like act.

(q) Licensees shall not knowingly enter, or wilfully continue in, any transaction, either as a principal or agent, wherein a purpose or objective of the licensee or his principal is to commit any of the following acts: Use, or conspire with others to obtain, inflated property appraisals; influence others to purchase property for another person in order to circumvent credit and down payment requirements or other limitations imposed by lenders, the department of housing and urban development or the veterans administration; file an application to refinance a loan for the purpose of drawing out the equity, when prohibited by lenders, the department of HUD or VA regulations; or acquire as an investor, or personally, properties subject to a loan guaranteed or insured by the department of HUD, collect rents thereon, while purposely failing to make mortgage payments on the property.

(r) Licensees shall not enter a transaction or agreement with the intent not to perform.

(s) Licensees shall make reasonable efforts to perform all obligations arising from any agreement entered into.

(t) Licensees shall not represent to any lender, guaranteeing agency or other interested party, either orally or through the preparation of false documents, an amount in excess of the true and actual sale price of the real estate or terms differing from those actually agreed upon.

(u) Licensees shall make a reasonable attempt to get all agreements, financial obligations and recommendations regarding all real estate transactions in writing.

(v) Licensees shall not undertake to make formal real estate appraisals that are outside the scope of the licensee's experience.

(w) Licensees cooperating with the exclusive listing licensee shall not obtain the cooperation of a subsequent licensee without the written consent of the listing licensee.

(x) Licensees shall not refuse, because of sex, race, creed, religion, color, age, familial status, physical or mental handicap, or national origin, to show, sell, lease, or rent any real estate to prospective renters, lessees, or purchasers, except when a distinction is based on reasonable grounds.

(y) Licensee shall submit all written offers to a principal when such offers are received prior to the listing agreement having been terminated or the transaction based on that listing having been closed, whichever occurs first. However, continuing to present offers after an offer has been accepted shall not be deemed to be a violation of 37-51-321(10), MCA.

(z) Licensees shall not disclose the name of a person making an offer or the amount or terms of an offer to other persons interested in making offers, except that this shall not prohibit disclosing the existence of an offer.

(aa) The licensee shall inform any seller at the time an offer is presented that he will be expected to pay certain closing costs such as discount points and the approximate amount of said costs.

(ab) Licensees shall not lend a broker's license to a salesman, or permit a salesman to operate as a broker.

(ac) Salespersons shall not act as brokers.

(ad) Licensees shall disclose to the broker-owner, responsible broker, business partner or any other responsible business associate any and all additional wages, tips, bonuses or gifts which have been or are to be recovered by the licensee which are not considered to be real estate commission(s).

(ae) A broker shall not sign the application of a salesperson unless the broker and salesperson shall be in lawful association, through employment contract or otherwise, and the broker will supervise the salesperson.

(af) A broker shall supervise salespersons and be responsible for their conduct.

(4) Licensees shall not knowingly submit false information to the board.

(5) The revocation or suspension or other disciplinary treatment of any other professional or occupational license or privilege held by the licensee in this state or another state, whether as an attorney, salesperson, broker, appraiser, or

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Business & Labor

DATE 3-8-95

BILL NO. SB 224 SPONSOR(S) _____

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
ZANE SULLIVAN 430 Ryman Missoula	MT. Assoc. of Realtors	✓	
Dick Hammond 1030 So. 9th W. Missoula	Mt. Assoc. of Realtors	✓	
David Hamer 600 Grand Ave. B.7/1095	IL C L	✓	
A. Liffler Billings	The Prudential of Idaho	✓	
COLLIER BAKER	M. A. R.	✓	
Robert Leach Billings	Peoples Billing	✓	
Mae Chapman Missoula	Missoula Realtors	✓	
Donald Funn 465 Carver	Billing Assoc. Real Estate	✓	
Dixie Dalton Missoula	Missoula Co. Assoc. of Realtors	✓	
P.C. MUSGROVE Kalispell	FLATHEAD BOARD OF REALTORS	✓	
Judy Wahlberg, Missoula	Missoula County Assoc. of Realtors	✓	
MARILYN Y. HUBLITT	Missoula County Assoc. of Realtors	✓	
Carl Prinzling 241 W Main St Msla	Missoula County Assoc. of Realtors	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORM
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

DATE _____

BILL NO. 224

SPONSOR(S) _____

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Russell B Hill	MT Trial Lawyers		
Don Snaveley	Self		✓
John Shantz	MT Assoc REALTORS	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FOR
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON BUSINESS & LABOR

Call to Order: By CHAIRMAN BRUCE T. SIMON, on March 9, 1995, at
8:00 A.M.

ROLL CALL

Members Present:

Rep. Bruce T. Simon, Chairman (R)
Rep. Norm Mills, Vice Chairman (Majority) (R)
Rep. Robert J. "Bob" Pavlovich, Vice Chairman (Minority) (D)
Rep. Vicki Cocchiarella (D)
Rep. Charles R. Devaney (R)
Rep. Jon Ellingson (D)
Rep. Alvin A. Ellis, Jr. (R)
Rep. David Ewer (D)
Rep. Rose Forbes (R)
Rep. Jack R. Herron (R)
Rep. Bob Keenan (R)
Rep. Don Larson (D)
Rep. Rod Marshall (R)
Rep. Jeanette S. McKee (R)
Rep. Karl Ohs (R)
Rep. Paul Sliter (R)
Rep. Carley Tuss (D)
Rep. Joe Barnett (R)

Members Excused: None.

Members Absent: None.

Staff Present: Stephen Maly, Legislative Council
Alberta Strachan, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 253, SB 317. SB 264
Executive Action: SB 253, SB 317, SB 374 (suspended), SB
224

REP. MILLS said he resisted the items REP. EWER had spoken of. He said they did not believe the State Fund should be competing with private industry. The Department of Commerce has been out offering to do audits for small towns and communities.

REP. COCCHIARELLA said she also went against REP. EWER'S position. There are too many claims per adjuster that the private sector does not do. Those claims adjusters do not want to make mistakes. They have huge caseloads which are coming down.

REP. ELLIS said private industry already skims the best business off by allowing people to insure almost all of the employers. They pay higher salaries than people salaried under State Fund. There is much less propensity for people to attack the fund.

Vote: A roll call vote was taken to adopt the #2 McKee amendment 13-5 with REPS. BARNETT, ELLIS, EWER, HERRON and KEENAN voting no.

Motion/Vote: REP. DEVANEY MOVED THE DEVANEY AMENDMENT. Motion carried to adopt the Devaney amendment 18-0.

Motion/Vote: REP. MCKEE MOVED SB 374 BE CONCURRED IN AS AMENDED. Motion carried 16-2 with REPS. PAVLOVICH and LARSON voting no.

EXECUTIVE ACTION ON SB 224

Motion: REP. DEVANEY MOVED SB 224 BE CONCURRED IN. REP. MILLS MOVED THE MILLS' AMENDMENTS.

Discussion:

REP. MILLS EXPLAINED THE AMENDMENTS.

REP. ELLIS asked if the insurance people had agreed on the amendments.

REP. ELLINGSON said he favored the amendment.

REP. EWER asked if this amendment put back some responsibility of people in the real estate business that they cannot pass on statements.

Vote: Motion carried to adopt the Mills amendment 18-0.

Motion: REP. ELLINGSON MOVED THE ELLINGSON AMENDMENT.

Discussion:

REP. DEVANEY asked if the amendment stated that all agencies involved in the transaction are required to get personal knowledge.

REP. ELLINGSON said a certain amount of responsibility was imposed on them but it is not expressed.

Vote: Motion carried to adopt the Ellingson amendment 18-0.

Motion/Vote: REP. PAVLOVICH MOVED THE PAVLOVICH AMENDMENT.
Motion carried to adopt the Pavlovich amendment 18-0.

Motion/Vote: REP. COCCHIARELLA MOVED THE COCCHIARELLA AMENDMENT.

Discussion:

CHAIRMAN SIMON said he did understand the concern for the amendment and perhaps the researcher might check with the Council to see if a conflict of interest was developing. He then stated that action will be suspended to have the opportunity to review this issue.

HOUSE OF REPRESENTATIVES

Business and Labor

ROLL CALL

DATE 3-9-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bruce Simon, Chairman	X		
Rep. Norm Mills, Vice Chairman, Majority	X		
Rep. Bob Pavlovich, Vice Chairman, Minority	X		
Rep. Joe Barnett	X		
Rep. Vicki Cocchiarella	X		
Rep. Charles Devaney	X		
Rep. Jon Ellingson	X		
Rep. Alvin Ellis, Jr.	X		
Rep. David Ewer	X		
Rep. Rose Forbes	X		
Rep. Jack Herron	X		
Rep. Bob Keenan	X		
Rep. Don Larson	X		
Rep. Rod Marshall	X		
Rep. Jeanette McKee	X		
Rep. Karl Ohs	X		
Rep. Paul Sliter	X		
Rep. Carley Tuss	X		

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON BUSINESS & LABOR

Call to Order: By **CHAIRMAN BRUCE T. SIMON**, on March 14, 1995, at 8:00 A.M.

ROLL CALL

Members Present:

Rep. Bruce T. Simon, Chairman (R)
Rep. Norm Mills, Vice Chairman (Majority) (R)
Rep. Robert J. "Bob" Pavlovich, Vice Chairman (Minority) (D)
Rep. Vicki Cocchiarella (D)
Rep. Charles R. Devaney (R)
Rep. Jon Ellingson (D)
Rep. Alvin A. Ellis, Jr. (R)
Rep. David Ewer (D)
Rep. Rose Forbes (R)
Rep. Jack R. Herron (R)
Rep. Bob Keenan (R)
Rep. Don Larson (D)
Rep. Rod Marshall (R)
Rep. Jeanette S. McKee (R)
Rep. Karl Ohs (R)
Rep. Paul Sliter (R)
Rep. Carley Tuss (D)
Rep. Joe Barnett (R)

Members Excused: None.

Members Absent: None.

Staff Present: Stephen Maly, Legislative Council
Alberta Strachan, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 246, SB 311, SB 350, SB 298,
Executive Action: SB 246, SB 298, SB 335, SB 224, SB 264

HEARING ON SB 246

Opening Statement by Sponsor:

SEN. JEFF WELDON, SD 35, Lake County, said this bill is an act providing for the issuance of an administrative warrant directing the pawnbroker to hold property for 30 days; providing for a

Discussion:

REP. LARSON said he was speaking against the amendment because the whole House floor voted on the amendment and said it should not be removed without the consideration of the House floor.

REP. MILLS said THAT since the bill was re-referred to the committee the committee should be able to do as it pleases with the bill.

REP. OHS said this bill would refer to any charge account.

CHAIRMAN SIMON said it is not a credit card. Some facilities have cards and some do not. It would be possible for someone to levy that kind of a charge. However, it would be highly unlikely a merchant would place that fee on a charge.

REP. SLITER asked for an explanation of the difference between the account referred to in this bill and revolving charge accounts.

Mr. Griffin said that if a person enters into a contractual agreement whereby the customer signs a credit application just as in a credit card, a company is entitled to collect a late fee. There are stipulations necessary in a written contract. If a company does have the necessary language stated in the bill, they are entitled to charge a late fee.

CHAIRMAN SIMON said a merchant in Montana may or may not issue a plastic card; but if they have a revolving account, the company may still charge a late fee.

Vote: Motion carried to adopt the Mills substitute amendment 13-5 with REPS. ELLINGSON, TUSS, MARSHALL, LARSON and COCCHIARELLA voting no.

Motion/Vote: REP. FORBES MOVED SB 335 BE CONCURRED IN AS AMENDED. Motion carried 15-3 with REPS. ELLINGSON, LARSON and COCCHIARELLA voting no.

EXECUTIVE ACTION ON SB 224Discussion:

CHAIRMAN SIMON said that a number of amendments were adopted in previous executive action and are already included in the bill.

Motion: REP. MILLS MOVED SB 224 BE CONCURRED IN AS AMENDED.

Discussion:

Steven Maly said the fourth amendment has yet to be adopted. The first three amendments have already been adopted.

Motion: REP. MILLS MOVED THE FOURTH AMENDMENT.

Discussion:

REP. EWER questioned statutory brokers in this bill. The statutory broker could well be the status quo. This bill lets realtors pass through information when they should be taking some diligence to ascertain that they are not repeating mis-statements of fact.

REP. MILLS said a statutory broker facilitates an agreement that two people have already reached. It does not necessarily represent one over the other but facilitates the transaction and does not put the two people together. They are already together when they come to him.

CHAIRMAN SIMON said a statutory broker is one that merely helps people fill out forms on a deal which has been formulated. The broker does not have anything to do with making the deal. They are not really acting on behalf of the seller or buyer.

REP. LARSON said he liked the amendment. He did suggest striking the first four words of the amendment. The broker keeps the two parties out of trouble.

REP. MILLS said that often statutory brokers never see the property. He then reiterated an instance of someone in Montana attempting to purchase property from an owner out of state in which a broker would be required to draw up the necessary documents.

REP. SLITER said the state requires that someone with a real estate license facilitate the sale.

REP. ELLINGSON asked about relieving the statutory broker of any sort of responsibility but does not want to impose upon the statutory broker responsibilities which are not consistent with what that person is actually going to do. He also asked what type of duties were imposed on a statutory broker.

Mr. Sullivan said the statutory broker is not intended to be an agent. In commercial transactions where the parties are very sophisticated and do not want to be tied to an agent they want someone to do particular things and that is all. It is not an agency relationship and hence it has been exempted from that requirement. In all the other relationships they are obligated to do that. The broker has a duty to conduct those activities which are requested in a confident and capable fashion. They are going to be liable for negligence in the handling of the transaction, putting together the paperwork or doing whatever the parties request them to do.

REP. LARSON said that the amendment does not require the statutory broker to make an investigation. That information is achieved by asking both parties the question.

REP. DEVANEY said the statutory broker does not actually need to go out and physically inspect the property. He can rely on what the two parties agree upon.

Vote: Motion carried to adopt the #4 Mills amendment. Motion carried 18-0.

Motion: REP. LARSON MOVED THE LARSON AMENDMENT.

Discussion:

REP. MILLS said if a commercial institution has its own real estate department and has gone out and decided to buy a piece of property and there is a complete meeting of the minds, law requires them to use an agent of the state. That agent, who does not know anything about the property, should not be obligated to ascertain the facts because the buyers already have the facts.

REP. ELLINGSON suggested that the first four words of the amendment be struck to indicate that the licensee must endeavor to ascertain all pertinent facts consistent with his role as either seller's agent, broker's agent or statutory agent concerning each property in the transaction.

Motion/Vote: REP. LARSON MOVED A SUBSTITUTE MOTION TO REVISE HIS PREVIOUS MOTION USING THE ELLINGSON LANGUAGE. Motion carried to adopt the Larson substitute amendment 18-0.

Motion/Vote: REP. MILLS MOVED SB 224 BE CONCURRED IN AS AMENDED. Motion carried 18-0.

EXECUTIVE ACTION ON SB 264

Motion/Vote: REP. COCCHIARELLA MOVED SB 264 BE CONCURRED IN. REP. COCCHIARELLA MOVED THE #1 COCCHIARELLA AMENDMENT. Motion carried to adopt the #1 Cocchiarella amendment 18-0.

Motion/Vote: REP. COCCHIARELLA MOVED THE #2 COCCHIARELLA AMENDMENT. Motion carried to adopt the #2 Cocchiarella amendment 18-0.

Motion/Vote: REP. MILLS MOVED THE STATE AUDITOR'S AMENDMENT. Motion carried to adopt the State Auditor's amendments 18-0.

Motion: REP. EWER MOVED THE EWER AMENDMENT.

Discussion:

REP. EWER explained his amendment.

HOUSE OF REPRESENTATIVES

Business and Labor

ROLL CALL

DATE 3-14-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bruce Simon, Chairman	X		
Rep. Norm Mills, Vice Chairman, Majority	X		
Rep. Bob Pavlovich, Vice Chairman, Minority	X		
Rep. Joe Barnett	X		
Rep. Vicki Cocchiarella	X		
Rep. Charles Devaney	X		
Rep. Jon Ellingson	X		
Rep. Alvin Ellis, Jr.	X		
Rep. David Ewer	X		
Rep. Rose Forbes	X		
Rep. Jack Herron	X		
Rep. Bob Keenan	X		
Rep. Don Larson	X		
Rep. Rod Marshall	X		
Rep. Jeanette McKee	X		
Rep. Karl Ohs	X		
Rep. Paul Sliter	X		
Rep. Carley Tuss	X		



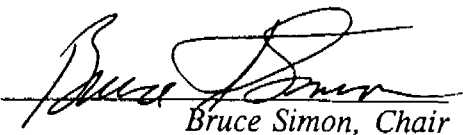
HOUSE STANDING COMMITTEE REPORT

March 15, 1995

Page 1 of 2

Mr. Speaker: We, the committee on **Business and Labor** report that **Senate Bill 224** (third reading copy -- blue) **be concurred in as amended.**

Signed:


Bruce Simon, Chair

And, that such amendments read:

Carried by: Rep. Bohlinger

1. Page 1, lines 27 and 28.

Following: "had" on line 27

Strike: "AIDS or another"

Insert: "a"

2. Page 7, following line 23.

Insert: "(b) disclose to a buyer or the buyer's agent when the seller's agent has no personal knowledge of the veracity of information regarding adverse material facts that concern the property;"

Renumber: subsequent subsections

3. Page 8, following line 11.

Insert: "(b) disclose to the seller or the seller's agent when the buyer's agent has no personal knowledge of the veracity of information regarding adverse material facts that concern the property;"

Renumber: subsequent subsections

4. Page 9, line 23.

Insert: "(10) Consistent with the licensee's duties as a buyer agent, a seller agent, a dual agent, or a statutory broker, a licensee shall endeavor to ascertain all pertinent facts concerning each property in any transaction in which the licensee acts so that the licensee may fulfill the obligation to avoid error, exaggeration, misrepresentation,

SB 224

Committee Vote:

Yes 18, No 0.

HOUSE

85

or concealment of pertinent facts."

-END-

2nd Reading

HOUSE JOURNAL
SIXTY-EIGHTH LEGISLATIVE DAY - MARCH 24, 1995

Excused: None.

Total 0

Absent or not voting: None.

Total 0

SB 224 - Representative Bohlinger moved SB 224 be concurred in. Motion carried as follows:

Ayes: Ahner, Anderson, Arnott, Barnett, Barnhart, Bergman, Boharski, Bohlinger, Brainard, Carey, Clark, Cobb, Cocchiarella, Curtiss, DeBruycker, Denny, Devaney, Ellingson, Elliott, Ellis, Ewer, Feland, Fisher, Forbes, Fuchs, Galvin, Grady, Green, Grimes, Grinde, Hagener, H.S. Hanson, M. Hanson, Harper, Harrington, Hayne, Heavy Runner, Herron, Hibbard, Holland, Hurdle, J. Johnson, R. Johnson, Jore, Kadas, Kasten, Keenan, Kitzenberg, Knox, Kottel, Larson, Marshall, Martinez, Masolo, McCann, McCulloch, McGee, McKee, Mills, Molnar, Murdock, Nelson, Ohs, Orr, Pavlovich, Peck, Raney, Ream, Rose, Ryan, Schwinden, Shea, Simon, Simpkins, Sliter, L. Smith, S. Smith, Soft, Somerville, Squires, Story, Stovall, Swanson, Tash, Taylor, Trexler, Tropila, Vick, Wagner, Wells, Wennemar, Wiseman, Wyatt, Zook, Mr. Speaker.

Total 95

Noes: Bergsagel.

Total 1

Voted Absentee: McCann, Aye.

Excused: None.

Total 0

Absent or not voting: Menahan, Quilici, Rehbein, Tuss.

Total 4

SB 246 - Representative Ellis moved SB 246 be concurred in. Motion carried as follows:

Ayes: Ahner, Anderson, Arnott, Barnett, Bergman, Boharski, Bohlinger, Brainard, Carey, Clark, Cobb, Cocchiarella, Curtiss, DeBruycker, Denny, Devaney, Ellingson, Elliott, Ellis, Ewer, Feland, Fisher, Forbes, Fuchs, Galvin, Grady, Green, Grimes, Grinde, Hagener, H.S. Hanson, M. Hanson, Harper, Harrington, Hayne, Heavy Runner, Herron, Hibbard, Holland, J. Johnson, R. Johnson, Jore, Kadas, Kasten, Keenan, Kitzenberg, Knox, Larson, Marshall, Martinez, Masolo, McCann, McCulloch, McGee, McKee, Menahan, Mills, Molnar, Murdock, Nelson, Orr, Pavlovich, Peck, Quilici, Raney, Ream, Rehbein, Rose, Schwinden, Shea, Simon, Sliter, L. Smith, S. Smith, Soft, Somerville, Squires, Story, Stovall, Swanson, Tash, Taylor, Trexler, Tropila, Vick, Wagner, Wells, Wennemar, Wiseman, Wyatt, Zook, Mr. Speaker.

Total 92

Noes: Barnhart, Bergsagel, Hurdle, Kottel, Ohs, Ryan.

Total 6

Voted Absentee: McCann, Aye.

Excused: None.

Total 0

3rd Reading

HOUSE JOURNAL
SIXTY-NINTH LEGISLATIVE DAY - MARCH 25, 1995

Galvin, Grady, Green, Grimes, Grinde, Hagener, H.S. Hanson, M. Hanson, Harper, Harrington, Hayne, Heavy Runner, Herron, Hibbard, Holland, J. Johnson, R. Johnson, Jore, Kadas, Kasten, Keenan, Kitzenberg, Knox, Kottel, Larson, Marshall, Martinez, Masolo, McCann, McCulloch, McGee, McKee, Menahan, Molnar, Murdock, Nelson, Ohs, Orr, Pavlovich, Peck, Quilici, Raney, Rehbein, Rose, Ryan, Schwinden, Shea, Simon, Simpkins, Sliter, L. Smith, S. Smith, Soft, Somerville, Squires, Story, Stovall, Swanson, Tash, Taylor, Trexler, Tropila, Tuss, Vick, Wagner, Wells, Wennemar, Wiseman, Zook, Mr. Speaker.
Total 94

Noes: Hurdle, Mills, Wyatt.
Total 3

Voted Absentee: Hagener, Holland, McCann, Taylor, Trexler, Ayes.

Excused: Boharski, Fuchs, Ream.
Total 3

Absent or not voting: None.
Total 0

SB 156 concurred in as follows:

Ayes: Ahner, Anderson, Barnett, Barnhart, Bergsagel, Bohlinger, Carey, Clark, Cocchiarella, Curtiss, Denny, Devaney, Ellingson, Elliott, Ellis, Ewer, Feland, Fisher, Forbes, Galvin, Grady, Green, Grimes, Grinde, Hagener, H.S. Hanson, Harper, Harrington, Heavy Runner, Herron, Hibbard, Holland, Hurdle, J. Johnson, R. Johnson, Kadas, Kasten, Kitzenberg, Knox, Kottel, Larson, Marshall, Masolo, McCann, McCulloch, McKee, Menahan, Mills, Molnar, Nelson, Ohs, Orr, Pavlovich, Quilici, Ream, Rose, Schwinden, Shea, Simon, Sliter, L. Smith, Soft, Squires, Story, Stovall, Swanson, Tash, Trexler, Tropila, Vick, Wennemar, Wiseman, Wyatt, Zook, Mr. Speaker.
Total 75

Noes: Arnott, Bergman, Boharski, Brainard, Cobb, DeBruycker, M. Hanson, Hayne, Jore, Keenan, Martinez, McGee, Murdock, Peck, Raney, Rehbein, Ryan, Simpkins, S. Smith, Somerville, Taylor, Tuss, Wagner, Wells.
Total 24

Voted Absentee: Hagener, Holland, McCann, Ream, Trexler, Ayes; Boharski, Taylor, Noes.

Excused: Fuchs.
Total 1

Absent or not voting: None.
Total 0

SB 224 concurred in as follows:

Ayes: Ahner, Anderson, Arnott, Barnett, Barnhart, Bergman, Bergsagel, Boharski, Bohlinger, Brainard, Carey, Clark, Cobb, Cocchiarella, Curtiss, DeBruycker, Denny, Devaney, Ellingson, Elliott, Ellis, Ewer, Feland, Fisher, Forbes, Galvin, Grady, Green, Grimes, Grinde, Hagener, H.S. Hanson, M. Hanson, Harper, Harrington, Hayne, Heavy Runner, Herron, Hibbard, Holland, Hurdle, J. Johnson, R. Johnson, Jore, Kadas, Kasten, Keenan, Kitzenberg, Knox, Kottel, Larson, Marshall, Martinez, Masolo, McCann, McCulloch, McGee, McKee, Menahan,

HOUSE JOURNAL
SIXTY-NINTH LEGISLATIVE DAY - MARCH 25, 1995

Mills, Molnar, Murdock, Nelson, Ohs, Orr, Pavlovich, Peck, Quilici, Raney, Rehbein, Rose, Ryan, Schwinden, Shea, Simon, Simpkins, Sliter, L. Smith, S. Smith, Soft, Somerville, Squires, Story, Stovall, Swanson, Tash, Taylor, Trexler, Tropila, Tuss, Vick, Wagner, Wells, Wennemar, Wiseman, Wyatt, Zook, Mr. Speaker.

Total 98

Noes: None.

Total 0

Voted Absentee: Boharski, Hagener, Holland, McCann, Taylor, Trexler, Ayes.

Excused: Fuchs, Ream.

Total 2

Absent or not voting: None.

Total 0

SB 246 concurred in as follows:

Ayes: Ahner, Anderson, Arnott, Barnett, Bergman, Bergsagel, Boharski, Bohlinger, Brainard, Carey, Clark, Cobb, Cocchiarella, Curtiss, DeBruycker, Denny, Devaney, Ellingson, Elliott, Ellis, Ewer, Feland, Fisher, Forbes, Galvin, Grady, Grimes, Grinde, Hagener, H.S. Hanson, M. Hanson, Harper, Harrington, Hayne, Heavy Runner, Herron, Hibbard, Holland, J. Johnson, R. Johnson, Jore, Kadas, Kasten, Keenan, Kitzenberg, Knox, Larson, Marshall, Martinez, Masolo, McCann, McCulloch, McGee, McKee, Menahan, Mills, Molnar, Murdock, Nelson, Orr, Pavlovich, Peck, Quilici, Raney, Rose, Schwinden, Shea, Simon, Simpkins, Sliter, L. Smith, S. Smith, Soft, Somerville, Squires, Story, Stovall, Swanson, Tash, Taylor, Trexler, Tropila, Tuss, Vick, Wagner, Wells, Wennemar, Wiseman, Wyatt, Zook, Mr. Speaker.

Total 91

Noes: Barnhart, Hurdle, Kottel, Ohs, Ryan.

Total 5

Voted Absentee: Boharski, Hagener, Holland, McCann, Taylor, Trexler, Ayes.

Excused: Fuchs, Ream.

Total 2

Absent or not voting: Green, Rehbein.

Total 2

SB 264 concurred in as follows:

Ayes: Ahner, Anderson, Barnett, Barnhart, Bergsagel, Boharski, Bohlinger, Carey, Clark, Cobb, Cocchiarella, Curtiss, Devaney, Ellingson, Elliott, Ellis, Ewer, Feland, Forbes, Galvin, Grady, Green, Grimes, Hagener, H.S. Hanson, M. Hanson, Harper, Harrington, Hayne, Heavy Runner, Herron, Hibbard, Holland, J. Johnson, R. Johnson, Kasten, Kitzenberg, Knox, Kottel, Marshall, Martinez, McCann, McCulloch, McGee, McKee, Mills, Nelson, Ohs, Orr, Pavlovich, Peck, Quilici, Raney, Rose, Shea, Simon, Simpkins, Sliter, L. Smith, Soft, Somerville, Squires, Stovall, Tash, Taylor, Tropila, Wells, Wennemar, Wiseman, Wyatt, Zook, Mr. Speaker.

Total 72

SENATE JOURNAL
SEVENTY-FIFTH LEGISLATIVE DAY - APRIL 1, 1995

Total 4

SB 132 Governor's Amendments - Senator Bishop moved that consideration of Governor's Amendments to SB 132 be passed for the day. Motion carried.

SB 249 House Amendments - Senator Bishop moved that consideration of House Amendments to SB 249 be passed for the day. Motion carried.

**SECOND READING OF BILLS
(COMMITTEE OF THE WHOLE)**

Majority Leader Harp moved that the Senate resolve itself into the Committee of the Whole for consideration of business on second reading. Motion carried. Senator Forrester in the Chair.

Mr. President: We, your Committee of the Whole, having had under consideration business on second reading, recommend as follows:

SB 224 House Amendments - Senator Christiaens moved House Amendments to SB 224 be concurred in. Motion carried unanimously.

Senator Christiaens assumed the chair.

SB 210 House Amendments - Senator Bishop moved House Amendments to SB 210 be concurred in. Motion carried unanimously.

Senator Holden excused at this time.

Senator Forrester assumed the chair.

SB 333 House Amendments - Senator Bishop moved House Amendments to SB 333 be concurred in. Motion failed as follows:

Yeas: Baer, Bishop, Burnett, Doherty, Eck, Forrester, Foster, Grosfield, Halligan, Harding, Jabs, Mesaros, Waterman, Wilson, Mr. President.

Total 15

Nays: Aklestad, Bartlett, Beck, Benedict, Brooke, Christiaens, Cole, Crismore, Devlin, Emerson, Estrada, Franklin, Gage, Hargrove, Harp, Jacobson, Jenkins, Jergeson, Keating, Lynch, Mohl, Nelson, Pipinich, Sprague, Swysgood, Toews, Tveit, Van Valkenburg, Weldon.

Total 29

Absent or not voting: Hertel.

Total 1

Excused: Crippen, Holden, Klampe, Miller, Stang.

Total 5

3rd Reading

SENATE JOURNAL
SEVENTY-SIXTH LEGISLATIVE DAY - APRIL 3, 1995

SB 224 House Amendments concurred in as follows:

Yeas: Aklestad, Baer, Bartlett, Beck, Benedict, Bishop, Brooke, Burnett, Christiaens, Cole, Crippen, Crismore, Devlin, Doherty, Eck, Emerson, Estrada, Forrester, Foster, Franklin, Gage, Halligan, Harding, Hargrove, Harp, Hertel, Jabs, Jacobson, Jenkins, Jergeson, Keating, Klampe, Lynch, Miller, Mohl, Nelson, Pipinich, Sprague, Swysgood, Tveit, Van Valkenburg, Waterman, Weldon, Wilson, Mr. President.
Total 45

Nays: None.
Total 0

Absent or not voting: None.
Total 0

Excused: Grosfield, Holden, Mesaros, Stang, Toews.
Total 5

SB 271 House Amendments concurred in as follows:

Yeas: Aklestad, Baer, Bartlett, Beck, Benedict, Bishop, Brooke, Burnett, Christiaens, Cole, Crippen, Crismore, Devlin, Doherty, Eck, Emerson, Estrada, Forrester, Foster, Franklin, Gage, Halligan, Harding, Hargrove, Harp, Hertel, Jabs, Jacobson, Jenkins, Jergeson, Keating, Klampe, Lynch, Miller, Mohl, Nelson, Pipinich, Sprague, Swysgood, Tveit, Van Valkenburg, Waterman, Weldon, Wilson, Mr. President.
Total 45

Nays: None.
Total 0

Absent or not voting: None.
Total 0

Excused: Grosfield, Holden, Mesaros, Stang, Toews.
Total 5

SB 316 House Amendments concurred in as follows:

Yeas: Aklestad, Baer, Bartlett, Beck, Benedict, Bishop, Brooke, Burnett, Christiaens, Cole, Crippen, Crismore, Devlin, Doherty, Eck, Emerson, Estrada, Forrester, Foster, Franklin, Gage, Halligan, Harding, Hargrove, Harp, Hertel, Jabs, Jacobson, Jenkins, Jergeson, Keating, Klampe, Lynch, Miller, Mohl, Nelson, Pipinich, Sprague, Swysgood, Tveit, Van Valkenburg, Waterman, Weldon, Wilson, Mr. President.
Total 45

Nays: None.
Total 0

Absent or not voting: None.
Total 0

SENATE JOURNAL
EIGHTY-THIRD LEGISLATIVE DAY - APRIL 11, 1995

or small, the language of section 5 should be corrected to reflect that intent.
Senator Gage, the sponsor of Senate Bill 86, is in agreement with these amendments.

Sincerely,

MARC RACICOT
Governor

GOVERNOR'S AMENDMENTS TO
SENATE BILL NO. 86
(REFERENCE COPY)
April 11, 1995

1. Title, line 7.
Strike: "IN THE AMOUNT OF \$500,000 OR GREATER"
2. Page 5, line 25.
Following: "transfer"
Strike: remainder of line 25 through "limitation"
3. Page 5, lines 26 and 27.
Following: "transfer" on line 26
Strike: remainder of line 26 through "greater" on line 27

April 11, 1995

The Honorable Bob Brown
President of the Senate
State Capitol
Helena MT 59620

The Honorable John Mercer
Speaker of the House
State Capitol
Helena MT 59620

Dear President Brown and Speaker Mercer:

In accordance with the power vested in me as Governor by the Constitution and laws of the State of Montana, I hereby return Senate Bill 224, **"AN ACT DEFINING THE RELATIONSHIPS AVAILABLE BETWEEN REAL ESTATE BROKERS OR SALESPERSONS AND BUYERS OR SELLERS IN REAL ESTATE TRANSACTIONS; ESTABLISHING THE OBLIGATIONS OWED BY REAL ESTATE BROKERS OR SALESPERSONS TO BUYERS OR SELLERS IN REAL ESTATE TRANSACTIONS; REQUIRING REAL ESTATE BROKERS AND SALESPERSONS TO PROVIDE BUYERS AND SELLERS WITH AGENCY DISCLOSURE STATEMENTS REGARDING AGENCY RELATIONSHIPS BETWEEN REAL ESTATE BROKERS OR SALESPERSONS AND BUYERS OR SELLERS IN A REAL ESTATE TRANSACTION; AND AMENDING SECTIONS 37-51-102 AND 37-51-321, MCA."**

SENATE JOURNAL
EIGHTY-THIRD LEGISLATIVE DAY - APRIL 11, 1995

Senate Bill 224 updates the realtor licensing statutes. Among its provisions is a definition of "adverse material fact," a fact that must be disclosed in a real estate transaction by buyers and sellers or their agents.

The definition of "adverse material fact" does not include the fact that the occupant of the property has or has had a communicable disease. During discussion of the bill, this part was amended to take out an express reference to AIDs, since it was already included in the term "communicable disease" and would thus be unnecessary language. Unfortunately, the amendment was not added to all of the appropriate sections of the bill.

The sponsor of Senate Bill 224, Senator Christiaens, and the sponsor of the original amendment, Representative Simon, are in agreement that these amendments will correct the oversight.

Sincerely,

MARC RACICOT
Governor

GOVERNOR'S AMENDMENTS TO
SENATE BILL NO. 224
(REFERENCE COPY)
April 11, 1995

1. Page 8, line 28.
Following: "diligence"
Insert: "in"

2. Page 11, line 30.
Page 13, line 24.
Page 14, line 28.
Strike: "AIDS or another"
Insert: "a"

April 11, 1995

The Honorable Bob Brown
President of the Senate
State Capitol
Helena MT 59620

The Honorable John Mercer
Speaker of the House
State Capitol
Helena MT 59620

Dear President Brown and Speaker Mercer:

In accordance with the power vested in me as Governor by the Constitution and laws of the State of Montana, I hereby return Senate Bill 249, **"AN ACT ELIMINATING THE ELECTED POSITION OF CLERK OF THE SUPREME COURT; TRANSFERRING CERTAIN FUNCTIONS TO THE SUPREME COURT ADMINISTRATOR;**

3rd Reading

SENATE JOURNAL
EIGHTY-FOURTH LEGISLATIVE DAY - APRIL 12, 1995

Devlin, Eck, Emerson, Estrada, Forrester, Foster, Franklin, Gage, Grosfield, Halligan, Harding, Hargrove, Harp, Hertel, Holden, Jabs, Jacobson, Jenkins, Jergeson, Keating, Klampe, Lynch, Mesaros, Miller, Mohl, Nelson, Pipinich, Sprague, Stang, Swysgood, Toews, Tveit, Van Valkenburg, Waterman, Weldon, Wilson, Mr. President.
Total 49

Nays: None.
Total 0

Absent or not voting: None.
Total 0

Excused: Doherty.
Total 1

SB 198 Conference Committee Report, adopted as follows:

Yeas: Aklestad, Baer, Bartlett, Beck, Benedict, Bishop, Brooke, Burnett, Christiaens, Cole, Crippen, Crismore, Devlin, Eck, Emerson, Estrada, Forrester, Foster, Franklin, Gage, Grosfield, Halligan, Harding, Hargrove, Harp, Hertel, Holden, Jabs, Jacobson, Jenkins, Jergeson, Keating, Klampe, Lynch, Mesaros, Miller, Mohl, Nelson, Pipinich, Sprague, Stang, Swysgood, Toews, Tveit, Van Valkenburg, Waterman, Weldon, Wilson, Mr. President.
Total 49

Nays: None.
Total 0

Absent or not voting: None.
Total 0

Excused: Doherty.
Total 1

SB 224 Governor's Amendments, concurred in as follows:

Yeas: Aklestad, Baer, Bartlett, Beck, Benedict, Bishop, Brooke, Burnett, Christiaens, Cole, Crippen, Crismore, Devlin, Eck, Emerson, Estrada, Forrester, Foster, Franklin, Gage, Grosfield, Halligan, Harding, Hargrove, Harp, Hertel, Holden, Jabs, Jacobson, Jenkins, Jergeson, Keating, Klampe, Lynch, Mesaros, Miller, Mohl, Nelson, Pipinich, Sprague, Stang, Swysgood, Toews, Tveit, Van Valkenburg, Waterman, Weldon, Wilson, Mr. President.
Total 49

Nays: None.
Total 0

Absent or not voting: None.
Total 0

Excused: Doherty.
Total 1

2nd Reading - Committee Work

HOUSE JOURNAL
EIGHTY-FOURTH LEGISLATIVE DAY - APRIL 12, 1995

Noes: Bergsagel.

Total 1

Excused: None.

Total 0

Absent or not voting: Kottel.

Total 1

SB 86 - Representative Jore moved Governor's amendments to SB 86 be concurred in. Motion carried as follows:

Ayes: Ahner, Anderson, Arnott, Barnett, Barnhart, Bergman, Boharski, Bohlinger, Brainard, Carey, Clark, Cobb, Cocchiarella, Curtiss, DeBruycker, Denny, Devaney, Ellingson, Elliott, Ellis, Ewer, Feland, Fisher, Forbes, Fuchs, Galvin, Grady, Green, Grimes, Grinde, Hagener, H.S. Hanson, M. Hanson, Harper, Harrington, Hayne, Heavy Runner, Herron, Hibbard, Holland, Hurdle, R. Johnson, Jore, Kadas, Kasten, Keenan, Kitzenberg, Knox, Larson, Marshall, Martinez, Masolo, McCann, McCulloch, McGee, McKee, Menahan, Mills, Murdock, Nelson, Ohs, Orr, Pavlovich, Peck, Quilici, Ream, Rehbein, Rose, Ryan, Schwinden, Shea, Simon, Simpkins, Sliter, L. Smith, S. Smith, Soft, Somerville, Squires, Story, Stovall, Swanson, Tash, Taylor, Trexler, Tropila, Tuss, Wagner, Wells, Wennemar, Wiseman, Wyatt, Zook, Mr. Speaker.

Total 94

Noes: Bergsagel, Vick.

Total 2

Excused: None.

Total 0

Absent or not voting: J. Johnson, Kottel, Molnar, Raney.

Total 4

SB 224 - Representative Bohlinger moved Governor's amendments to SB 224 be concurred in. Motion carried as follows:

Ayes: Ahner, Anderson, Arnott, Barnett, Barnhart, Bergman, Boharski, Bohlinger, Brainard, Carey, Clark, Cobb, Cocchiarella, Curtiss, DeBruycker, Denny, Devaney, Ellingson, Elliott, Ellis, Ewer, Feland, Fisher, Forbes, Fuchs, Grady, Green, Grimes, Grinde, Hagener, H.S. Hanson, M. Hanson, Harper, Harrington, Hayne, Heavy Runner, Herron, Hibbard, Holland, Hurdle, J. Johnson, R. Johnson, Jore, Kadas, Kasten, Keenan, Kitzenberg, Knox, Larson, Marshall, Martinez, Masolo, McCann, McCulloch, McGee, McKee, Menahan, Mills, Molnar, Murdock, Nelson, Ohs, Orr, Pavlovich, Peck, Quilici, Raney, Ream, Rose, Ryan, Schwinden, Shea, Simon, Simpkins, Sliter, L. Smith, S. Smith, Soft, Somerville, Story, Stovall, Swanson, Tash, Taylor, Trexler, Tropila, Tuss, Vick, Wagner, Wells, Wennemar, Wiseman, Wyatt, Zook, Mr. Speaker.

Total 95

Noes: Bergsagel, Galvin, Rehbein.

Total 3

Excused: None.

Total 0

HOUSE JOURNAL
EIGHTY-FOURTH LEGISLATIVE DAY - APRIL 12, 1995

Absent or not voting: Kottel, Squires.
Total 2

SB 357 - Representative Harper moved Governor's amendments to SB 357 be concurred in. Motion carried as follows:

Ayes: Ahner, Anderson, Arnott, Barnett, Barnhart, Bergman, Bohlinger, Carey, Clark, Cobb, Cocchiarella, Curtiss, DeBruycker, Denny, Devaney, Ellingson, Elliott, Ellis, Ewer, Feland, Fisher, Forbes, Fuchs, Galvin, Grimes, Grinde, Hagener, H.S. Hanson, M. Hanson, Harper, Harrington, Hayne, Heavy Runner, Herron, Hibbard, Holland, Hurdle, J. Johnson, R. Johnson, Jore, Kadas, Kasten, Keenan, Kitzenberg, Knox, Larson, Marshall, Martinez, Masolo, McCulloch, McGee, McKee, Menahan, Murdock, Nelson, Ohs, Orr, Pavlovich, Peck, Quilici, Raney, Ream, Rose, Ryan, Schwinden, Shea, Simon, Simpkins, Sliter, L. Smith, Soft, Squires, Stovall, Swanson, Tash, Taylor, Tropila, Tuss, Vick, Wagner, Wells, Wennemar, Wiseman, Wyatt, Zook.
Total 85

Noes: Bergsagel, Boharski, Brainard, Green, McCann, Mills, Molnar, Rehbein, S. Smith, Somerville, Story, Trexler.
Total 12

Excused: None.
Total 0

Absent or not voting: Grady, Kottel, Mr. Speaker.
Total 3

SB 366 - Representative Holland moved Governor's amendments to SB 366 be concurred in. Motion carried as follows:

Ayes: Anderson, Arnott, Barnett, Barnhart, Bergman, Boharski, Bohlinger, Brainard, Carey, Clark, Cobb, Cocchiarella, Curtiss, DeBruycker, Denny, Devaney, Ellingson, Elliott, Ellis, Ewer, Feland, Fisher, Forbes, Galvin, Grady, Green, Grimes, Grinde, Hagener, H.S. Hanson, M. Hanson, Harper, Harrington, Hayne, Heavy Runner, Herron, Hibbard, Holland, Hurdle, J. Johnson, R. Johnson, Jore, Kadas, Keenan, Kitzenberg, Knox, Larson, Marshall, Martinez, Masolo, McCann, McCulloch, McGee, McKee, Menahan, Mills, Molnar, Murdock, Nelson, Ohs, Orr, Pavlovich, Peck, Quilici, Raney, Ream, Rehbein, Rose, Ryan, Schwinden, Shea, Simon, Simpkins, Sliter, L. Smith, Soft, Somerville, Squires, Story, Stovall, Swanson, Tash, Taylor, Trexler, Tropila, Tuss, Vick, Wagner, Wells, Wennemar, Wiseman, Wyatt, Zook, Mr. Speaker.
Total 94

Noes: Bergsagel, Kasten, S. Smith.
Total 3

Excused: None.
Total 0

Absent or not voting: Ahner, Fuchs, Kottel.
Total 3

HB 584 - Representative Grinde moved consideration of HB 584 be placed at the bottom of the second reading

3rd Reading

HOUSE JOURNAL
EIGHTY-FIFTH LEGISLATIVE DAY - APRIL 13, 1995

Kitzenberg, Knox, Kottel, Larson, Marshall, Martinez, Masolo, McCann, McCulloch, McGee, McKee, Menahan, Mills, Molnar, Murdock, Nelson, Ohs, Orr, Pavlovich, Peck, Quilici, Raney, Ream, Rehbein, Rose, Ryan, Schwinden, Shea, Simon, Simpkins, Sliter, L. Smith, S. Smith, Soft, Somerville, Squires, Story, Stovall, Swanson, Tash, Taylor, Trexler, Tropila, Tuss, Vick, Wagner, Wells, Wennemar, Wiseman, Wyatt, Zook, Mr. Speaker.
Total 99

Noes: Grinde.
Total 1

Excused: None.
Total 0

Absent or not voting: None.
Total 0

SB 224, Governor's amendments, concurred in as follows:

Ayes: Ahner, Anderson, Arnott, Barnett, Barnhart, Bergman, Bergsagel, Boharski, Bohlinger, Brainard, Carey, Clark, Cobb, Cocchiarella, Curtiss, DeBruycker, Denny, Devaney, Ellingson, Elliott, Ellis, Ewer, Feland, Fisher, Forbes, Fuchs, Galvin, Grady, Green, Grimes, Grinde, Hagener, H.S. Hanson, M. Hanson, Harper, Harrington, Hayne, Heavy Runner, Herron, Hibbard, Holland, Hurdle, J. Johnson, R. Johnson, Jore, Kadas, Kasten, Keenan, Kitzenberg, Knox, Kottel, Larson, Marshall, Martinez, Masolo, McCann, McCulloch, McGee, McKee, Menahan, Mills, Molnar, Murdock, Nelson, Ohs, Orr, Pavlovich, Peck, Quilici, Raney, Ream, Rehbein, Rose, Ryan, Schwinden, Shea, Simon, Simpkins, Sliter, L. Smith, S. Smith, Soft, Somerville, Squires, Story, Stovall, Swanson, Tash, Taylor, Trexler, Tropila, Tuss, Vick, Wagner, Wells, Wennemar, Wiseman, Wyatt, Zook, Mr. Speaker.
Total 100

Noes: None.
Total 0

Excused: None.
Total 0

Absent or not voting: None.
Total 0

SB 357, Governor's amendments, concurred in as follows:

Ayes: Ahner, Barnett, Bergman, Bohlinger, Carey, Clark, Cobb, Cocchiarella, DeBruycker, Denny, Devaney, Ellingson, Elliott, Ellis, Ewer, Feland, Fisher, Forbes, Fuchs, Galvin, Grady, Grimes, Hagener, H.S. Hanson, M. Hanson, Harper, Harrington, Hayne, Heavy Runner, Herron, Hibbard, Holland, J. Johnson, R. Johnson, Kadas, Kitzenberg, Knox, Kottel, Larson, Marshall, Masolo, McCulloch, McGee, McKee, Menahan, Molnar, Nelson, Ohs, Pavlovich, Peck, Quilici, Raney, Ream, Rose, Ryan, Schwinden, Shea, Simon, Simpkins, Sliter, L. Smith, Squires, Stovall, Swanson, Tash, Taylor, Tropila, Tuss, Wells, Wennemar, Wiseman, Wyatt, Zook, Mr. Speaker.
Total 74

Noes: Anderson, Arnott, Barnhart, Bergsagel, Boharski, Brainard, Curtiss, Green, Grinde, Jore, Kasten, Keenan, Martinez, McCann, Mills, Orr, Rehbein, S. Smith, Soft, Somerville, Story, Trexler, Vick, Wagner.

SENATE BILL NO. 224

INTRODUCED BY CHRISTIAENS, BOHLINGER, TOEWS, KLAMPE, SPRAGUE, BARNHART, WELDON,
FORRESTER, BARTLETT, SQUIRES, WILSON, HERTEL, KEATING, T. NELSON, GAGE

A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING THE RELATIONSHIPS AVAILABLE BETWEEN REAL ESTATE BROKERS OR SALESPERSONS AND BUYERS OR SELLERS IN REAL ESTATE TRANSACTIONS; ESTABLISHING THE OBLIGATIONS OWED BY REAL ESTATE BROKERS OR SALESPERSONS TO BUYERS OR SELLERS IN REAL ESTATE TRANSACTIONS; REQUIRING REAL ESTATE BROKERS AND SALESPERSONS TO PROVIDE BUYERS AND SELLERS WITH AGENCY DISCLOSURE STATEMENTS REGARDING AGENCY RELATIONSHIPS BETWEEN REAL ESTATE BROKERS OR SALESPERSONS AND BUYERS OR SELLERS IN A REAL ESTATE TRANSACTION; AND AMENDING SECTIONS 37-51-102 AND 37-51-321, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 37-51-102, MCA, is amended to read:

"37-51-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Account" means the real estate recovery account established in 37-51-501.

(2) (a) "Adverse material fact" means a fact that should be recognized by a broker or salesperson as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property and may be a fact that:

(i) materially affects the value, affects structural integrity, or presents a documented health risk to occupants of the property; or

(ii) materially affects the buyer's ability or intent to perform the buyer's obligations under a proposed or existing contract.

(b) The term does not include the fact that an occupant of the property has or has had AIDS or another A communicable disease or that the property was the site of a suicide or felony.

~~(2)(3)~~ "Board" means the board of realty regulation provided for in 2-15-1867.

~~(3)(4)~~ "Broker" includes an individual who:

1 (a) for another or for valuable consideration or who with the intent or expectation of receiving
2 valuable consideration negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange, or
3 lease of real estate or of the improvements on real estate or collects rents or attempts to collect rents;

4 (b) is employed by or on behalf of the owner or lessor of real estate to conduct the sale, leasing,
5 subleasing, or other disposition of real estate for consideration;

6 (c) engages in the business of charging an advance fee or contracting for collection of a fee in
7 connection with a contract by which the individual undertakes primarily to promote the sale, lease, or other
8 disposition of real estate in this state through its listing in a publication issued primarily for this purpose or
9 for referral of information concerning real estate to brokers;

10 (d) makes the advertising, sale, lease, or other real estate information available by public display
11 to potential buyers and who aids, attempts, or offers to aid, for a fee, any person in locating or obtaining
12 any real estate for purchase or lease;

13 (e) aids or attempts or offers to aid, for a fee, any person in locating or obtaining any real estate
14 for purchase or lease;

15 (f) receives a fee, commission, or other compensation for referring to a licensed broker or ~~salesman~~
16 salesperson the name of a prospective buyer or seller of real property; or

17 (g) advertises or represents to the public that the individual is engaged in any of the activities
18 referred to in subsections ~~(3)(a)~~ (4)(a) through ~~(3)(f)~~ (4)(f).

19 (4)(5) "Broker associate" means a broker who associates, as an employee or independent
20 contractor, with a broker owner and does not own an interest in a real estate firm.

21 (5)(6) "Broker owner" means a broker who owns or has a financial interest in a real estate firm.

22 (7) "Buyer" means a person who is interested in acquiring an ownership interest in real property
23 or who has entered into an agreement to acquire an interest in real property. The term includes tenants
24 or potential tenants with respect to leases or rental agreements of real property.

25 (8) "Buyer agent" means a broker or salesperson who, pursuant to a written buyer broker
26 agreement, is acting as the agent of the buyer in a real estate transaction and includes a buyer subagent
27 and an in-house buyer agent designate.

28 (9) "Buyer broker agreement" means a written agreement in which a prospective buyer employs
29 a broker to locate real estate of the type and with terms and conditions as designated in the written
30 agreement.

1 (10) "Buyer subagent" means a broker or salesperson who, pursuant to an offer of a subagency,
2 acts as the agent of a buyer.

3 ~~(6)~~(11) "Department" means the department of commerce provided for in Title 2, chapter 15, part
4 18.

5 (12) "Dual agent" means a broker or salesperson who, pursuant to a written listing agreement or
6 buyer broker agreement or as a buyer or seller subagent, acts as the agent of both the buyer and seller with
7 written authorization as provided in [section 4]. An in-house buyer or seller agent designate may not be
8 considered a dual agent.

9 ~~(7)~~(13) "Franchise agreement" means a contract or agreement by which:

10 (a) a franchisee is granted the right to engage in business under a marketing plan prescribed in
11 substantial part by the franchisor;

12 (b) the operation of the franchisee's business is substantially associated with the franchisor's
13 trademark, trade name, logotype, or other commercial symbol or advertising designating the franchisor; and

14 (c) the franchisee is required to pay, directly or indirectly, a fee for the right to operate under the
15 agreement.

16 (14) "In-house buyer agent designate" means a broker associate or salesperson employed by or
17 associated as an independent contractor with a broker owner and designated by the broker owner as the
18 exclusive agent for a buyer for a designated transaction and who may not be considered to be acting for
19 other than the buyer with respect to the designated transaction.

20 (15) "In-house seller agent designate" means a broker associate or salesperson employed by or
21 associated as an independent contractor with a broker owner and designated by the broker owner as the
22 exclusive agent for a seller for a designated transaction and who may not be considered to be acting for
23 other than the seller with respect to the designated transaction.

24 (16) "Listing agreement" means a written agreement between a seller and broker for the sale of
25 real estate, with the terms and conditions set out in the agreement.

26 (17) "Negotiations" means:

27 (a) efforts to act as an intermediary between parties to a real estate transaction;

28 (b) facilitating and participating in contract discussions;

29 (c) completing forms for offers, counteroffers, addendums, and other writings; and

30 (d) presenting offers and counteroffers.

1 ~~(9)~~(18) "Person" includes individuals, partnerships, associations, and corporations, foreign and
2 domestic, except that when referring to a person licensed under this chapter, it means an individual.

3 ~~(9)~~(19) "Property manager" includes a person who for a salary, commission, or compensation of
4 any kind engages in the business of leasing, renting, subleasing, or other transfer of possession of real
5 estate belonging to others without transfer of the title to the property, pursuant to 37-51-601 and
6 37-51-602.

7 ~~(10)~~(20) "Real estate" includes leaseholds as well as any other interest or estate in land, whether
8 corporeal, incorporeal, freehold, or nonfreehold and whether the real estate is situated in this state or
9 elsewhere.

10 (21) "Real estate transaction" means the sale, exchange, or lease or grant of an option for the sale,
11 exchange, or lease of an interest in real estate and includes all communication, interposition, advisement,
12 negotiation, and contract development and closing.

13 ~~(11)~~(22) "~~Salesman~~" "Salesperson" includes an individual who for a salary, commission, or
14 compensation of any kind is associated, either directly, indirectly, regularly, or occasionally, with a real
15 estate broker to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate.

16 (23) "Seller" means a person who has entered into a listing agreement to sell real estate and
17 includes landlords who have an interest in or are a party to a lease or rental agreement.

18 (24) "Seller agent" means a broker or salesperson who, pursuant to a written listing agreement, acts
19 as the agent of a seller and includes a seller subagent and an in-house seller agent designate.

20 (25) "Seller subagent" means a broker or salesperson who, pursuant to an offer of a subagency,
21 acts as the agent of a seller.

22 (26) (a) "Statutory broker" means a broker or salesperson who assists one or more parties to a real
23 estate transaction without acting as an agent or representative of any party to the real estate transaction.

24 (b) A broker or salesperson is presumed to be acting as a statutory broker unless the broker or
25 salesperson has entered into a listing agreement with a seller or a buyer broker agreement with a buyer or
26 has disclosed, as required in this chapter, a relationship other than that of a statutory broker."

27
28 Section 2. Section 37-51-321, MCA, is amended to read:

29 "37-51-321. Revocation or suspension of license -- initiation of proceedings -- grounds. (1) The
30 board may on its own motion and shall on the sworn complaint in writing of a person investigate the

actions of a real estate broker or a real estate salesperson, subject to 37-1-101 and 37-1-121, and may revoke or suspend a license issued under this chapter when the broker or salesperson has been found guilty by a majority of the board of any of the following practices:

(a) intentionally misleading, untruthful, or inaccurate advertising, whether printed or by radio, display, or other nature, which advertising in any material particular or in any material way misrepresents any property, terms, values, policies, or services of the business conducted. A broker who operates under a franchise agreement engages in misleading, untruthful, or inaccurate advertising if in using the franchise name, the broker does not incorporate the broker's own name in the franchise name or logotype or does not conspicuously display, on the broker's letterhead and other printed materials available to the public, a statement that the broker's office is independently owned and operated and the trade name, if any, by which the office is known. The board may not adopt advertising standards more stringent than those set forth in this subsection.

(b) making any false promises of a character likely to influence, persuade, or induce;

(c) pursuing a continued and flagrant course of misrepresentation or making false promises through agents or salespersons or any medium of advertising or otherwise;

(d) use of the term "realtor" by a person not authorized to do so or using another trade name or insignia of membership in a real estate organization of which the licensee is not a member;

(e) failing to account for or to remit money coming into the broker's or salesperson's possession belonging to others;

(f) accepting, giving, or charging an undisclosed commission, rebate, or profit on expenditures made for a principal;

(g) acting in a dual capacity of broker and undisclosed principal in a transaction, including failing to disclose in advertisements for real property the person's dual capacity as broker and principal;

(h) guaranteeing, authorizing, or permitting a person to guarantee future profits ~~which~~ that may result from the resale of real property;

(i) offering real property for sale or lease without the knowledge and consent of the owner or the owner's authorized agent or on terms other than those authorized by the owner or the owner's authorized agent;

(j) inducing a party to a contract of sale or lease to break the contract for the purpose of substituting a new contract with another principal;

1 (k) accepting employment or compensation for appraising real property contingent on the reporting
2 of a predetermined value or issuing an appraisal report on real property in which the broker or salesperson
3 has an undisclosed interest;

4 (l) negotiating a sale, exchange, or lease of real property directly with ~~an owner or lessee~~ a seller
5 or buyer if the broker or salesperson knows that the ~~owner~~ seller or buyer has a written, outstanding
6 ~~contract~~ listing agreement or buyer broker agreement in connection with the property granting an exclusive
7 agency to another broker;

8 (m) soliciting, selling, or offering for sale real property by conducting lotteries for the purpose of
9 influencing a purchaser or prospective purchaser of real property;

10 (n) representing or attempting to represent a real estate broker other than the employer without
11 the express knowledge or consent of the employer;

12 (o) failing voluntarily to furnish a copy of a written instrument to a party executing it at the time
13 of its execution;

14 (p) paying a commission in connection with a real estate sale or transaction to a person who is not
15 licensed as a real estate broker or real estate salesperson under this chapter;

16 (q) intentionally violating a rule adopted by the board in the interests of the public and in conformity
17 with this chapter;

18 (r) failing, if a salesperson, to place, as soon after receipt as is practicably possible, in the custody
19 of the salesperson's registered broker, deposit money or other money entrusted to the salesperson in that
20 capacity by a person;

21 (s) demonstrating unworthiness or incompetency to act as a broker or salesperson; or

22 (t) conviction of a felony.

23 (2) (a) It is unlawful for a broker or salesperson to openly advertise property belonging to others,
24 whether by means of printed material, radio, television, or display or by other means, unless the broker or
25 salesperson has a signed listing agreement from the owner of the property. The listing agreement must be
26 valid as of the date of advertisement.

27 (b) The provisions of subsection (2)(a) do not prevent a broker or salesperson from including
28 information on properties listed by other brokers or salespersons who will cooperate with the selling broker
29 or salesperson in materials dispensed to prospective customers.

30 (c) The license of a broker or salesperson who violates this subsection (2) may be suspended or

1 revoked as provided in subsection (1)."

2
3 **NEW SECTION. Section 3. Duties, duration, and termination of relationship between broker or**
4 **salesperson and buyer or seller.** (1) The provisions of this chapter and the duties described in this section
5 govern the relationships between brokers or salespersons and buyers or sellers and are intended to replace
6 the common law as applied to these relationships. The duties of a broker or salesperson vary depending
7 upon the relationship with a party to a real estate transaction and are as provided in this section.

8 (2) A seller's agent is obligated to the seller to:

9 (a) act solely in the best interests of the seller;

10 (b) obey promptly and efficiently all lawful instructions of the seller;

11 (c) disclose all relevant AND MATERIAL information that concerns the real estate transaction and
12 that is known to the seller's agent and not known or discoverable by the seller, unless the information is
13 subject to confidentiality arising from a prior or existing agency relationship on the part of the seller's agent;

14 (d) safeguard the seller's confidences;

15 (e) exercise reasonable care, skill, and diligence in pursuing the seller's objectives and in complying
16 with the terms established in the listing agreement;

17 (f) fully account to the seller for any funds or property of the seller that comes into the seller's
18 agent's possession; and

19 (g) comply with all applicable federal and state laws, rules, and regulations.

20 (3) A seller's agent is obligated to the buyer to:

21 (a) disclose to a buyer or the buyer's agent any adverse material facts that concern the property
22 and that are known to the seller's agent, except that the seller's agent is not required to inspect the
23 property or verify any statements made by the seller;

24 (B) DISCLOSE TO A BUYER OR THE BUYER'S AGENT WHEN THE SELLER'S AGENT HAS NO
25 PERSONAL KNOWLEDGE OF THE VERACITY OF INFORMATION REGARDING ADVERSE MATERIAL FACTS
26 THAT CONCERN THE PROPERTY;

27 ~~(b)~~(C) act in good faith with a buyer and a buyer's agent; and

28 ~~(c)~~(D) comply with all applicable federal and state laws, rules, and regulations.

29 (4) A buyer's agent is obligated to the buyer to:

30 (a) act solely in the best interests of the buyer;

(b) obey promptly and efficiently all lawful instructions of the buyer;

(c) disclose all relevant AND MATERIAL information that concerns the real estate transaction and that is known to the buyer's agent and not known or discoverable by the buyer, unless the information is subject to confidentiality arising from a prior or existing agency relationship on the part of the buyer's agent;

(d) safeguard the buyer's confidences;

(e) exercise reasonable care, skill, and diligence in pursuing the buyer's objectives and in complying with the terms established in the buyer broker agreement;

(f) fully account to the buyer for any funds or property of the buyer that comes into the buyer's agent's possession; and

(g) comply with all applicable federal and state laws, rules and regulations.

(5) A buyer's agent is obligated to the seller to:

(a) disclose any adverse material facts that are known to the buyer's agent and that concern the ability of the buyer to perform on any purchase offer;

(B) DISCLOSE TO THE SELLER OR THE SELLER'S AGENT WHEN THE BUYER'S AGENT HAS NO PERSONAL KNOWLEDGE OF THE VERACITY OF INFORMATION REGARDING ADVERSE MATERIAL FACTS THAT CONCERN THE PROPERTY:

~~(b)(C)~~ act in good faith with a seller and a seller's agent; and

~~(c)(D)~~ comply with all applicable federal and state laws, rules, and regulations.

(6) A statutory broker is not the agent of the buyer or seller but nevertheless is obligated to them to:

(a) disclose to:

(i) a buyer or a buyer's agent any adverse material facts that concern the property and that are known to the statutory broker, except that the statutory broker is not required to inspect the property or verify any statements made by the seller;

(ii) a seller or a seller's agent any adverse material facts that are known to the statutory broker and that concern the ability of the buyer to perform on any purchase offer;

(b) exercise reasonable care, skill, and diligence putting together a real estate transaction; and

(c) comply with all applicable federal and state laws, rules, and regulations.

(7) A dual agent is obligated to a seller in the same manner as a seller's agent and is obligated to

1 a buyer in the same manner as a buyer's agent under this section, except as follows:

2 (a) a dual agent has a duty to disclose to a buyer or seller any adverse material facts that are
3 known to the dual agent, regardless of any confidentiality considerations; and

4 (b) a dual agent may not disclose the following information without the written consent of the
5 person to whom the information is confidential:

6 (i) the fact that the buyer is willing to pay more than the offered purchase price;

7 (ii) the fact that the seller is willing to accept less than the purchase price that the seller is asking
8 for the property;

9 (iii) factors motivating either party to buy or sell; and

10 (iv) any information that a party indicates in writing to the dual agent is to be kept confidential.

11 (8) (a) The agency relationship of a buyer agent, seller agent, or dual agent continues until the
12 earliest of the following dates:

13 (i) completion of performance by the agent;

14 (ii) the expiration date agreed to in the listing agreement or buyer broker agreement; or

15 (iii) the occurrence of any authorized termination of the listing agreement or buyer broker
16 agreement.

17 (b) A statutory broker's relationship continues until the completion, termination, or abandonment
18 of the real estate transaction giving rise to the relationship.

19 (9) Upon termination of an agency relationship, a broker or salesperson does not have any further
20 duties to the principal, except as follows:

21 (a) to account for all money and property of the principal;

22 (b) to keep confidential all information received during the course of the agency relationship that
23 was made confidential at the principal's direction, except for:

24 (i) subsequent conduct by the principal that authorizes disclosure;

25 (ii) disclosure required by law or to prevent the commission of a crime;

26 (iii) the information being disclosed by someone other than the broker or salesperson; and

27 (iv) the disclosure of the information being reasonably necessary to defend the conduct of the
28 broker or salesperson, including employees, independent contractors, and subagents.

29 (10) CONSISTENT WITH THE LICENSEE'S DUTIES AS A BUYER AGENT, A SELLER AGENT, A
30 DUAL AGENT, OR A STATUTORY BROKER, A LICENSEE SHALL ENDEAVOR TO ASCERTAIN ALL

1 PERTINENT FACTS CONCERNING EACH PROPERTY IN ANY TRANSACTION IN WHICH THE LICENSEE
2 ACTS SO THAT THE LICENSEE MAY FULFILL THE OBLIGATION TO AVOID ERROR, EXAGGERATION,
3 MISREPRESENTATION, OR CONCEALMENT OF PERTINENT FACTS.

4
5 NEW SECTION. Section 4. Relationship disclosure requirements. (1) A broker or salesperson shall
6 disclose the existence and nature of relevant agency or other relationships to the parties to a real estate
7 transaction as provided in this section.

8 (2) A seller agent shall make the required relationship disclosures:

9 (a) to the seller at the time the listing agreement is executed or, if the seller agent is acting as a
10 seller subagent, at the time negotiations commence; and

11 (b) to the buyer or buyer agent at the time negotiations commence.

12 (3) A buyer agent shall make the required relationship disclosures:

13 (a) to the buyer at the time the buyer broker agreement is executed or, if the buyer agent is acting
14 as a buyer subagent, at the time negotiations commence; and

15 (b) to the seller or seller agent at the time negotiations commence.

16 (4) A statutory broker shall make the required relationship disclosure to the buyer and seller at the
17 time negotiations commence.

18 (5) A buyer agent or seller agent who subsequently becomes a dual agent shall disclose the
19 relationship to the buyer and seller and receive their consent prior to the time or at the time that the dual
20 agency arises.

21 (6) A disclosure required by this section must be signed and dated by the party to whom the
22 disclosure is directed and by the broker or salesperson. A disclosure must contain substantially the
23 following information:

24 (a) Seller agent disclosure to the seller: "(Name of seller agent) will be representing you as your
25 agent or subagent in the sale of your property located at (address of property). Your seller agent is
26 obligated to you as enumerated below. If your seller agent is also representing a buyer who becomes
27 interested in your property, a dual agency may be created. In a dual agency relationship, the seller agent
28 is obligated to the buyer in the same way as to you. This conflict will prohibit the seller agent from
29 advocating exclusively on your behalf or the buyer's behalf and may limit the level of representation you
30 receive. If the potential for a dual agency arises, the seller agent shall provide you with a dual agent

disclosure. A seller agent cannot act as a dual agent without your consent and that of the buyer. This consent is given by you and the buyer signing the dual agent disclosure. If you or the buyer declines to give this consent, your opportunity to sell your property to that buyer may be lost.

Your seller agent is obligated to you as follows:

(1) to act solely in the best interests of the seller to the exclusion of all other interests, including those of the seller agent;

(2) to obey promptly and efficiently all lawful instructions of the seller;

(3) to disclose to the seller all relevant and material information that concerns the real estate transaction and that is known by the seller agent and not known by the seller, unless the information is subject to confidentiality arising from a prior or existing agency relationship;

(4) to safeguard the seller's confidences;

(5) to exercise reasonable skill, care, and diligence in pursuing the seller's objectives as established in the listing agreement;

(6) to fully account to the seller for all funds or property of the seller coming into the seller agent's possession;

(7) to comply with all applicable federal and state laws, rules, and regulations; and

(8) to carry out the terms of the listing agreement."

(b) Seller agent disclosure to the buyer: "(Name of seller agent) is the agent of the seller with respect to the seller's property located at (address of property). Although the seller agent is primarily obligated to the seller, the seller agent is obligated to you as specified below.

A seller agent is obligated to a buyer as follows:

(1) to disclose to a buyer any adverse material facts that concern the property and that are known to the seller agent;

(2) to deal in good faith with the buyer; and

(3) to comply with all applicable federal and state laws, rules, and regulations.

"Adverse material fact" means a fact that should be recognized by a broker as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property and may be a fact that materially affects the value or structural integrity or presents a documented health risk to occupants of the property. The term may not include the fact that an occupant of the property has or has had AIDS or another communicable disease or that the property was the site of a suicide or felony."

(c) Buyer agent disclosure to the buyer: "(Name of buyer agent) will be representing you as your agent or subagent in the purchase of real property of the nature described in the buyer broker agreement. Your buyer agent is obligated to you as enumerated below. If your buyer agent is also representing a seller of property that you become interested in, a dual agency may be created. In a dual agency relationship, the buyer agent is obligated to the seller in the same way as to you. This conflict will prohibit the buyer agent from advocating exclusively on your behalf or on the seller's behalf and may limit the level of representation you receive. If the potential for a dual agency arises, the buyer agent shall provide you with a dual agent disclosure. A buyer agent cannot act as a dual agent without your consent and that of the seller. This consent is given by you and the seller signing the dual agent disclosure. If you or the seller declines to give this consent, your opportunity to acquire the seller's property may be lost.

Your buyer agent is obligated to you as follows:

(1) to act solely in the best interests of the buyer to the exclusion of all other interests, including those of the buyer agent;

(2) to obey promptly and efficiently all lawful instructions of the buyer;

(3) to disclose to the buyer all relevant and material information that concerns the real estate transaction and that is known by the buyer agent and not known by the buyer, unless the information is subject to confidentiality arising from a prior or existing agency relationship;

(4) to safeguard the buyer's confidences;

(5) to exercise reasonable skill, care, and diligence in pursuing the buyer's objectives as established in the buyer broker agreement;

(6) to fully account to the buyer for all funds or property of the buyer coming into the buyer agent's possession;

(7) to comply with all applicable federal and state laws, rules, and regulations; and

(8) to carry out the terms of the buyer broker agreement."

(d) Buyer agent disclosure to the seller: "(Name of buyer agent) is representing the buyer with respect to the seller's property located at (address of property). Although the buyer agent is primarily obligated to the buyer, the buyer agent is obligated to you as specified below.

A buyer agent is obligated to a seller as follows:

(i) to disclose to a seller any adverse material facts that concern the property ABILITY OF THE BUYER TO PERFORM ON ANY PURCHASE OFFER and that are known to the buyer agent;

1 (ii) to deal in good faith with the seller; and

2 (iii) to comply with all applicable federal and state laws, rules, and regulations.

3 "Adverse material fact" means a fact that should be recognized by a broker as being of enough
4 significance as to affect a person's decision to enter into a contract to buy or sell real property and may
5 be a fact that materially affects the buyer's ability or intent to perform the buyer's obligations under a
6 proposed or existing contract."

7 (e) Statutory agent BROKER disclosure to the buyer and seller: "(Name of statutory broker) will
8 be involved as a statutory broker with respect to the purchase and sale of real property located at
9 (address). A statutory broker is not the agent of the buyer or seller but is only assisting the parties in
10 executing a sale of the property. A statutory broker is obligated to the buyer and seller as specified below.

11 A statutory broker is obligated to the parties as follows:

12 (1) to disclose to a buyer any adverse material fact that concerns the property and that is known
13 to the statutory broker and not known to the buyer. However, the statutory broker is not required to
14 conduct an independent inspection of the property or to verify any representation made by the seller.

15 (2) to disclose to the seller any adverse material fact that concerns the buyer's intent or ability to
16 perform on the purchase offer and that is known to the statutory broker and not known to the seller;

17 (3) to exercise reasonable skill, care, and diligence in facilitating the purchase and sale of the
18 property; and

19 (4) to comply with all applicable federal and state laws, rules, and regulations.

20 "Adverse material fact" means a fact that should be recognized by a broker as being of enough
21 significance as to affect a person's decision to enter into a contract to buy or sell real property. It may be
22 a fact that materially affects the value or structural integrity or presents a documented health risk to
23 occupants of the property, but may not include the fact that an occupant of the property has or has had
24 AIDS or another communicable disease or that the property was the site of a suicide or felony, or it may
25 be a fact that materially affects the buyer's ability or intent to perform the buyer's obligations under a
26 proposed or existing contract."

27 (f) Dual agent disclosure to the buyer and seller: "(Name of dual agent) is the agent of the buyer
28 interested in purchasing the property and of the seller of the property located at (address of property). A
29 dual agent is obligated to the buyer and seller as follows:

30 (1) to act solely in the best interests of the buyer and seller to the exclusion of all other interests

1 including the dual agent's;

2 (2) to obey promptly and efficiently all lawful instructions of the buyer and seller;

3 (3) to disclose to the buyer and seller all relevant and material information that concerns the real
4 estate transaction and that is known by the dual agent and not known by the buyer or seller, unless the
5 information is subject to confidentiality arising from a prior or existing agency relationship;

6 (4) to exercise reasonable skill, care, and diligence in pursuing the buyer's and seller's objectives
7 as established in the listing agreement and buyer broker agreement;

8 (5) to fully account to the buyer and seller for all funds or property of the buyer AND SELLER
9 coming into the dual agent's possession;

10 (6) to comply with all applicable federal and state laws, rules, and regulations;

11 (7) to carry out the terms of the buyer broker agreement; and

12 (8) to safeguard the buyer's and seller's confidences, ~~except that~~ SUBJECT TO the obligation to
13 ~~disclose relevant and material information concerning the real estate transaction to either the buyer or the~~
14 ~~seller supersedes any confidentiality requirement. However, the~~ TO A BUYER OR A SELLER ANY ADVERSE
15 MATERIAL FACTS THAT ARE KNOWN TO THE DUAL AGENT, REGARDLESS OF ANY CONFIDENTIALITY
16 CONSIDERATIONS. THE following may not be disclosed without the written consent of the party to whom
17 the information is confidential:

18 (a) that the buyer is willing to pay more than the buyer has offered for the property;

19 (b) that the seller is willing to accept less than the asking price for the property;

20 (c) factors motivating the buyer to buy or the seller to sell; and

21 (d) any other information that a party specifically indicates in writing to the dual agent is to be kept
22 confidential and that is not ~~relevant and material information concerning the real estate transaction~~ AN
23 ADVERSE MATERIAL FACT.

24 "Adverse material fact" means a fact that should be recognized by a broker as being of enough
25 significance as to affect a person's decision to enter into a contract to buy or sell real property. It may be
26 a fact that materially affects the value or structural integrity or presents a documented health risk to
27 occupants of the property, but may not include the fact that an occupant of the property has or has had
28 AIDS or another communicable disease or that the property was the site of a suicide or felony, or it may
29 be a fact that materially affects the buyer's ability or intent to perform the buyer's obligations under a
30 proposed or existing contract.

1 Upon signing this disclosure form, the buyer and seller acknowledge that they understand the
2 obligations owed by a dual agent to them and consent to the dual agent representing them as a dual
3 agent."

4 (7) A written disclosure that complies with the provisions of this section must be construed as a
5 sufficient disclosure of the relationship between a broker or salesperson and a buyer or seller and must be
6 construed as conclusively establishing the obligations owed by a broker or salesperson to a buyer or seller
7 in a real estate transaction.

8
9 **NEW SECTION. Section 5. Vicarious liability.** (1) A party to a real estate transaction is not liable
10 for a misrepresentation made by the party's agent or subagent unless:

- 11 (a) the party has actual knowledge of the misrepresentation; or
12 (b) the agent or subagent is repeating a misrepresentation made by the party.

13 (2) A broker is not liable for a misrepresentation made by the broker's broker associate or subagent
14 unless:

- 15 (a) the broker has actual knowledge of the misrepresentation;
16 (b) a broker associate making the misrepresentation is an employee of the broker and not an
17 independent contractor or subagent; or
18 (c) a broker associate or subagent is repeating a misrepresentation made by the broker.

19 (3) An agent is not liable for a misrepresentation made by the principal unless the agent has
20 **ACTUAL** knowledge of the misrepresentation.

21
22 **NEW SECTION. Section 6. Name change -- directions to code commissioner.** In Title 37, chapter
23 51, or in material enacted by the 54th legislature that is to be codified in Title 37, chapter 51, wherever
24 the name "salesman" appears, the code commissioner is directed to change the name to "salesperson".
25

26 **NEW SECTION. Section 7. Codification instruction.** [Sections 3 through 5] are intended to be
27 codified as an integral part of Title 37, chapter 51, part 3, and the provisions of Title 37, chapter 51, part
28 3, apply to [sections 3 through 5].

29 -END-

GOVERNOR'S AMENDMENTS TO
SENATE BILL NO. 224
(REFERENCE COPY)
April 11, 1995

1. Page 8, line 28.
Following: "diligence"
Insert: "in"
2. Page 11, line 30.
Page 13, line 24.
Page 14, line 28.
Strike: "AIDS or another"
Insert: "a"

SENATE BILL NO. 224

INTRODUCED BY CHRISTIAENS, BOHLINGER, TOEWS, KLAMPE, SPRAGUE, BARNHART, WELDON,
FORRESTER, BARTLETT, SQUIRES, WILSON, HERTEL, KEATING, T. NELSON, GAGE

A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING THE RELATIONSHIPS AVAILABLE BETWEEN REAL ESTATE BROKERS OR SALESPERSONS AND BUYERS OR SELLERS IN REAL ESTATE TRANSACTIONS; ESTABLISHING THE OBLIGATIONS OWED BY REAL ESTATE BROKERS OR SALESPERSONS TO BUYERS OR SELLERS IN REAL ESTATE TRANSACTIONS; REQUIRING REAL ESTATE BROKERS AND SALESPERSONS TO PROVIDE BUYERS AND SELLERS WITH AGENCY DISCLOSURE STATEMENTS REGARDING AGENCY RELATIONSHIPS BETWEEN REAL ESTATE BROKERS OR SALESPERSONS AND BUYERS OR SELLERS IN A REAL ESTATE TRANSACTION; AND AMENDING SECTIONS 37-51-102 AND 37-51-321, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 37-51-102, MCA, is amended to read:

"37-51-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Account" means the real estate recovery account established in 37-51-501.

(2) (a) "Adverse material fact" means a fact that should be recognized by a broker or salesperson as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property and may be a fact that:

(i) materially affects the value, affects structural integrity, or presents a documented health risk to occupants of the property; or

(ii) materially affects the buyer's ability or intent to perform the buyer's obligations under a proposed or existing contract.

(b) The term does not include the fact that an occupant of the property has or has had AIDS or another A communicable disease or that the property was the site of a suicide or felony.

~~(2)~~(3) "Board" means the board of realty regulation provided for in 2-15-1867.

~~(3)~~(4) "Broker" includes an individual who:

(a) for another or for valuable consideration or who with the intent or expectation of receiving valuable consideration negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange, or lease of real estate or of the improvements on real estate or collects rents or attempts to collect rents;

(b) is employed by or on behalf of the owner or lessor of real estate to conduct the sale, leasing, subleasing, or other disposition of real estate for consideration;

(c) engages in the business of charging an advance fee or contracting for collection of a fee in connection with a contract by which the individual undertakes primarily to promote the sale, lease, or other disposition of real estate in this state through its listing in a publication issued primarily for this purpose or for referral of information concerning real estate to brokers;

(d) makes the advertising, sale, lease, or other real estate information available by public display to potential buyers and who aids, attempts, or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease;

(e) aids or attempts or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease;

(f) receives a fee, commission, or other compensation for referring to a licensed broker or ~~salesman~~ salesperson the name of a prospective buyer or seller of real property; or

(g) advertises or represents to the public that the individual is engaged in any of the activities referred to in subsections ~~(3)(a)~~ (4)(a) through ~~(3)(f)~~ (4)(f).

~~(4)(5)~~ "Broker associate" means a broker who associates, as an employee or independent contractor, with a broker owner and does not own an interest in a real estate firm.

~~(5)(6)~~ "Broker owner" means a broker who owns or has a financial interest in a real estate firm.

(7) "Buyer" means a person who is interested in acquiring an ownership interest in real property or who has entered into an agreement to acquire an interest in real property. The term includes tenants or potential tenants with respect to leases or rental agreements of real property.

(8) "Buyer agent" means a broker or salesperson who, pursuant to a written buyer broker agreement, is acting as the agent of the buyer in a real estate transaction and includes a buyer subagent and an in-house buyer agent designate.

(9) "Buyer broker agreement" means a written agreement in which a prospective buyer employs a broker to locate real estate of the type and with terms and conditions as designated in the written agreement.

1 (10) "Buyer subagent" means a broker or salesperson who, pursuant to an offer of a subagency,
2 acts as the agent of a buyer.

3 ~~(6)(11)~~ "Department" means the department of commerce provided for in Title 2, chapter 15, part
4 18.

5 (12) "Dual agent" means a broker or salesperson who, pursuant to a written listing agreement or
6 buyer broker agreement or as a buyer or seller subagent, acts as the agent of both the buyer and seller with
7 written authorization as provided in [section 4]. An in-house buyer or seller agent designate may not be
8 considered a dual agent.

9 ~~(7)(13)~~ "Franchise agreement" means a contract or agreement by which:

10 (a) a franchisee is granted the right to engage in business under a marketing plan prescribed in
11 substantial part by the franchisor;

12 (b) the operation of the franchisee's business is substantially associated with the franchisor's
13 trademark, trade name, logotype, or other commercial symbol or advertising designating the franchisor; and

14 (c) the franchisee is required to pay, directly or indirectly, a fee for the right to operate under the
15 agreement.

16 (14) "In-house buyer agent designate" means a broker associate or salesperson employed by or
17 associated as an independent contractor with a broker owner and designated by the broker owner as the
18 exclusive agent for a buyer for a designated transaction and who may not be considered to be acting for
19 other than the buyer with respect to the designated transaction.

20 (15) "In-house seller agent designate" means a broker associate or salesperson employed by or
21 associated as an independent contractor with a broker owner and designated by the broker owner as the
22 exclusive agent for a seller for a designated transaction and who may not be considered to be acting for
23 other than the seller with respect to the designated transaction.

24 (16) "Listing agreement" means a written agreement between a seller and broker for the sale of
25 real estate, with the terms and conditions set out in the agreement.

26 (17) "Negotiations" means:

27 (a) efforts to act as an intermediary between parties to a real estate transaction;

28 (b) facilitating and participating in contract discussions;

29 (c) completing forms for offers, counteroffers, addendums, and other writings; and

30 (d) presenting offers and counteroffers.

1 ~~(8)(18)~~ "Person" includes individuals, partnerships, associations, and corporations, foreign and
2 domestic, except that when referring to a person licensed under this chapter, it means an individual.

3 ~~(9)(19)~~ "Property manager" includes a person who for a salary, commission, or compensation of
4 any kind engages in the business of leasing, renting, subleasing, or other transfer of possession of real
5 estate belonging to others without transfer of the title to the property, pursuant to 37-51-601 and
6 37-51-602.

7 ~~(10)(20)~~ "Real estate" includes leaseholds as well as any other interest or estate in land, whether
8 corporeal, incorporeal, freehold, or nonfreehold and whether the real estate is situated in this state or
9 elsewhere.

10 (21) "Real estate transaction" means the sale, exchange, or lease or grant of an option for the sale,
11 exchange, or lease of an interest in real estate and includes all communication, interposition, advisement,
12 negotiation, and contract development and closing.

13 ~~(11)(22)~~ "Salesman" "Salesperson" includes an individual who for a salary, commission, or
14 compensation of any kind is associated, either directly, indirectly, regularly, or occasionally, with a real
15 estate broker to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate.

16 (23) "Seller" means a person who has entered into a listing agreement to sell real estate and
17 includes landlords who have an interest in or are a party to a lease or rental agreement.

18 (24) "Seller agent" means a broker or salesperson who, pursuant to a written listing agreement, acts
19 as the agent of a seller and includes a seller subagent and an in-house seller agent designate.

20 (25) "Seller subagent" means a broker or salesperson who, pursuant to an offer of a subagency,
21 acts as the agent of a seller.

22 (26) (a) "Statutory broker" means a broker or salesperson who assists one or more parties to a real
23 estate transaction without acting as an agent or representative of any party to the real estate transaction.

24 (b) A broker or salesperson is presumed to be acting as a statutory broker unless the broker or
25 salesperson has entered into a listing agreement with a seller or a buyer broker agreement with a buyer or
26 has disclosed, as required in this chapter, a relationship other than that of a statutory broker."

27
28 **Section 2.** Section 37-51-321, MCA, is amended to read:

29 **"37-51-321. Revocation or suspension of license -- initiation of proceedings -- grounds.** (1) The
30 board may on its own motion and shall on the sworn complaint in writing of a person investigate the

actions of a real estate broker or a real estate salesperson, subject to 37-1-101 and 37-1-121, and may revoke or suspend a license issued under this chapter when the broker or salesperson has been found guilty by a majority of the board of any of the following practices:

(a) intentionally misleading, untruthful, or inaccurate advertising, whether printed or by radio, display, or other nature, which advertising in any material particular or in any material way misrepresents any property, terms, values, policies, or services of the business conducted. A broker who operates under a franchise agreement engages in misleading, untruthful, or inaccurate advertising if in using the franchise name, the broker does not incorporate the broker's own name in the franchise name or logotype or does not conspicuously display, on the broker's letterhead and other printed materials available to the public, a statement that the broker's office is independently owned and operated and the trade name, if any, by which the office is known. The board may not adopt advertising standards more stringent than those set forth in this subsection.

(b) making any false promises of a character likely to influence, persuade, or induce;

(c) pursuing a continued and flagrant course of misrepresentation or making false promises through agents or salespersons or any medium of advertising or otherwise;

(d) use of the term "realtor" by a person not authorized to do so or using another trade name or insignia of membership in a real estate organization of which the licensee is not a member;

(e) failing to account for or to remit money coming into the broker's or salesperson's possession belonging to others;

(f) accepting, giving, or charging an undisclosed commission, rebate, or profit on expenditures made for a principal;

(g) acting in a dual capacity of broker and undisclosed principal in a transaction, including failing to disclose in advertisements for real property the person's dual capacity as broker and principal;

(h) guaranteeing, authorizing, or permitting a person to guarantee future profits ~~which~~ that may result from the resale of real property;

(i) offering real property for sale or lease without the knowledge and consent of the owner or the owner's authorized agent or on terms other than those authorized by the owner or the owner's authorized agent;

(j) inducing a party to a contract of sale or lease to break the contract for the purpose of substituting a new contract with another principal;

1 (k) accepting employment or compensation for appraising real property contingent on the reporting
2 of a predetermined value or issuing an appraisal report on real property in which the broker or salesperson
3 has an undisclosed interest;

4 (l) negotiating a sale, exchange, or lease of real property directly with ~~an owner or lessee~~ a seller
5 or buyer if the broker or salesperson knows that the ~~owner~~ seller or buyer has a written, outstanding
6 ~~contract~~ listing agreement or buyer broker agreement in connection with the property granting an exclusive
7 agency to another broker;

8 (m) soliciting, selling, or offering for sale real property by conducting lotteries for the purpose of
9 influencing a purchaser or prospective purchaser of real property;

10 (n) representing or attempting to represent a real estate broker other than the employer without
11 the express knowledge or consent of the employer;

12 (o) failing voluntarily to furnish a copy of a written instrument to a party executing it at the time
13 of its execution;

14 (p) paying a commission in connection with a real estate sale or transaction to a person who is not
15 licensed as a real estate broker or real estate salesperson under this chapter;

16 (q) intentionally violating a rule adopted by the board in the interests of the public and in conformity
17 with this chapter;

18 (r) failing, if a salesperson, to place, as soon after receipt as is practicably possible, in the custody
19 of the salesperson's registered broker, deposit money or other money entrusted to the salesperson in that
20 capacity by a person;

21 (s) demonstrating unworthiness or incompetency to act as a broker or salesperson; or

22 (t) conviction of a felony.

23 (2) (a) It is unlawful for a broker or salesperson to openly advertise property belonging to others,
24 whether by means of printed material, radio, television, or display or by other means, unless the broker or
25 salesperson has a signed listing agreement from the owner of the property. The listing agreement must be
26 valid as of the date of advertisement.

27 (b) The provisions of subsection (2)(a) do not prevent a broker or salesperson from including
28 information on properties listed by other brokers or salespersons who will cooperate with the selling broker
29 or salesperson in materials dispensed to prospective customers.

30 (c) The license of a broker or salesperson who violates this subsection (2) may be suspended or

1 revoked as provided in subsection (1)."

2
3 **NEW SECTION. Section 3. Duties, duration, and termination of relationship between broker or**
4 **salesperson and buyer or seller.** (1) The provisions of this chapter and the duties described in this section
5 govern the relationships between brokers or salespersons and buyers or sellers and are intended to replace
6 the common law as applied to these relationships. The duties of a broker or salesperson vary depending
7 upon the relationship with a party to a real estate transaction and are as provided in this section.

8 (2) A seller's agent is obligated to the seller to:

9 (a) act solely in the best interests of the seller;

10 (b) obey promptly and efficiently all lawful instructions of the seller;

11 (c) disclose all relevant AND MATERIAL information that concerns the real estate transaction and
12 that is known to the seller's agent and not known or discoverable by the seller, unless the information is
13 subject to confidentiality arising from a prior or existing agency relationship on the part of the seller's agent;

14 (d) safeguard the seller's confidences;

15 (e) exercise reasonable care, skill, and diligence in pursuing the seller's objectives and in complying
16 with the terms established in the listing agreement;

17 (f) fully account to the seller for any funds or property of the seller that comes into the seller's
18 agent's possession; and

19 (g) comply with all applicable federal and state laws, rules, and regulations.

20 (3) A seller's agent is obligated to the buyer to:

21 (a) disclose to a buyer or the buyer's agent any adverse material facts that concern the property
22 and that are known to the seller's agent, except that the seller's agent is not required to inspect the
23 property or verify any statements made by the seller;

24 **(B) DISCLOSE TO A BUYER OR THE BUYER'S AGENT WHEN THE SELLER'S AGENT HAS NO**
25 **PERSONAL KNOWLEDGE OF THE VERACITY OF INFORMATION REGARDING ADVERSE MATERIAL FACTS**
26 **THAT CONCERN THE PROPERTY:**

27 ~~(b)(C)~~ act in good faith with a buyer and a buyer's agent; and

28 ~~(e)(D)~~ comply with all applicable federal and state laws, rules, and regulations.

29 (4) A buyer's agent is obligated to the buyer to:

30 (a) act solely in the best interests of the buyer;

(b) obey promptly and efficiently all lawful instructions of the buyer;

(c) disclose all relevant AND MATERIAL information that concerns the real estate transaction and that is known to the buyer's agent and not known or discoverable by the buyer, unless the information is subject to confidentiality arising from a prior or existing agency relationship on the part of the buyer's agent;

(d) safeguard the buyer's confidences;

(e) exercise reasonable care, skill, and diligence in pursuing the buyer's objectives and in complying with the terms established in the buyer broker agreement;

(f) fully account to the buyer for any funds or property of the buyer that comes into the buyer's agent's possession; and

(g) comply with all applicable federal and state laws, rules and regulations.

(5) A buyer's agent is obligated to the seller to:

(a) disclose any adverse material facts that are known to the buyer's agent and that concern the ability of the buyer to perform on any purchase offer;

(B) DISCLOSE TO THE SELLER OR THE SELLER'S AGENT WHEN THE BUYER'S AGENT HAS NO PERSONAL KNOWLEDGE OF THE VERACITY OF INFORMATION REGARDING ADVERSE MATERIAL FACTS THAT CONCERN THE PROPERTY;

~~(b)~~(C) act in good faith with a seller and a seller's agent; and

~~(c)~~(D) comply with all applicable federal and state laws, rules, and regulations.

(6) A statutory broker is not the agent of the buyer or seller but nevertheless is obligated to them to:

(a) disclose to:

(i) a buyer or a buyer's agent any adverse material facts that concern the property and that are known to the statutory broker, except that the statutory broker is not required to inspect the property or verify any statements made by the seller;

(ii) a seller or a seller's agent any adverse material facts that are known to the statutory broker and that concern the ability of the buyer to perform on any purchase offer;

(b) exercise reasonable care, skill, and diligence IN putting together a real estate transaction; and

(c) comply with all applicable federal and state laws, rules, and regulations.

(7) A dual agent is obligated to a seller in the same manner as a seller's agent and is obligated to

1 a buyer in the same manner as a buyer's agent under this section, except as follows:

2 (a) a dual agent has a duty to disclose to a buyer or seller any adverse material facts that are
3 known to the dual agent, regardless of any confidentiality considerations; and

4 (b) a dual agent may not disclose the following information without the written consent of the
5 person to whom the information is confidential:

6 (i) the fact that the buyer is willing to pay more than the offered purchase price;

7 (ii) the fact that the seller is willing to accept less than the purchase price that the seller is asking
8 for the property;

9 (iii) factors motivating either party to buy or sell; and

10 (iv) any information that a party indicates in writing to the dual agent is to be kept confidential.

11 (8) (a) The agency relationship of a buyer agent, seller agent, or dual agent continues until the
12 earliest of the following dates:

13 (i) completion of performance by the agent;

14 (ii) the expiration date agreed to in the listing agreement or buyer broker agreement; or

15 (iii) the occurrence of any authorized termination of the listing agreement or buyer broker
16 agreement.

17 (b) A statutory broker's relationship continues until the completion, termination, or abandonment
18 of the real estate transaction giving rise to the relationship.

19 (9) Upon termination of an agency relationship, a broker or salesperson does not have any further
20 duties to the principal, except as follows:

21 (a) to account for all money and property of the principal;

22 (b) to keep confidential all information received during the course of the agency relationship that
23 was made confidential at the principal's direction, except for:

24 (i) subsequent conduct by the principal that authorizes disclosure;

25 (ii) disclosure required by law or to prevent the commission of a crime;

26 (iii) the information being disclosed by someone other than the broker or salesperson; and

27 (iv) the disclosure of the information being reasonably necessary to defend the conduct of the
28 broker or salesperson, including employees, independent contractors, and subagents.

29 (10) CONSISTENT WITH THE LICENSEE'S DUTIES AS A BUYER AGENT, A SELLER AGENT, A
30 DUAL AGENT, OR A STATUTORY BROKER, A LICENSEE SHALL ENDEAVOR TO ASCERTAIN ALL

122

1 PERTINENT FACTS CONCERNING EACH PROPERTY IN ANY TRANSACTION IN WHICH THE LICENSEE
2 ACTS SO THAT THE LICENSEE MAY FULFILL THE OBLIGATION TO AVOID ERROR, EXAGGERATION,
3 MISREPRESENTATION, OR CONCEALMENT OF PERTINENT FACTS.

4
5 NEW SECTION. Section 4. Relationship disclosure requirements. (1) A broker or salesperson shall
6 disclose the existence and nature of relevant agency or other relationships to the parties to a real estate
7 transaction as provided in this section.

8 (2) A seller agent shall make the required relationship disclosures:

9 (a) to the seller at the time the listing agreement is executed or, if the seller agent is acting as a
10 seller subagent, at the time negotiations commence; and

11 (b) to the buyer or buyer agent at the time negotiations commence.

12 (3) A buyer agent shall make the required relationship disclosures:

13 (a) to the buyer at the time the buyer broker agreement is executed or, if the buyer agent is acting
14 as a buyer subagent, at the time negotiations commence; and

15 (b) to the seller or seller agent at the time negotiations commence.

16 (4) A statutory broker shall make the required relationship disclosure to the buyer and seller at the
17 time negotiations commence.

18 (5) A buyer agent or seller agent who subsequently becomes a dual agent shall disclose the
19 relationship to the buyer and seller and receive their consent prior to the time or at the time that the dual
20 agency arises.

21 (6) A disclosure required by this section must be signed and dated by the party to whom the
22 disclosure is directed and by the broker or salesperson. A disclosure must contain substantially the
23 following information:

24 (a) Seller agent disclosure to the seller: "(Name of seller agent) will be representing you as your
25 agent or subagent in the sale of your property located at (address of property). Your seller agent is
26 obligated to you as enumerated below. If your seller agent is also representing a buyer who becomes
27 interested in your property, a dual agency may be created. In a dual agency relationship, the seller agent
28 is obligated to the buyer in the same way as to you. This conflict will prohibit the seller agent from
29 advocating exclusively on your behalf or the buyer's behalf and may limit the level of representation you
30 receive. If the potential for a dual agency arises, the seller agent shall provide you with a dual agent

1 disclosure. A seller agent cannot act as a dual agent without your consent and that of the buyer. This
2 consent is given by you and the buyer signing the dual agent disclosure. If you or the buyer declines to
3 give this consent, your opportunity to sell your property to that buyer may be lost.

4 Your seller agent is obligated to you as follows:

5 (1) to act solely in the best interests of the seller to the exclusion of all other interests, including
6 those of the seller agent;

7 (2) to obey promptly and efficiently all lawful instructions of the seller;

8 (3) to disclose to the seller all relevant and material information that concerns the real estate
9 transaction and that is known by the seller agent and not known by the seller, unless the information is
10 subject to confidentiality arising from a prior or existing agency relationship;

11 (4) to safeguard the seller's confidences;

12 (5) to exercise reasonable skill, care, and diligence in pursuing the seller's objectives as established
13 in the listing agreement;

14 (6) to fully account to the seller for all funds or property of the seller coming into the seller agent's
15 possession;

16 (7) to comply with all applicable federal and state laws, rules, and regulations; and

17 (8) to carry out the terms of the listing agreement."

18 (b) Seller agent disclosure to the buyer: "(Name of seller agent) is the agent of the seller with
19 respect to the seller's property located at (address of property). Although the seller agent is primarily
20 obligated to the seller, the seller agent is obligated to you as specified below.

21 A seller agent is obligated to a buyer as follows:

22 (1) to disclose to a buyer any adverse material facts that concern the property and that are known
23 to the seller agent;

24 (2) to deal in good faith with the buyer; and

25 (3) to comply with all applicable federal and state laws, rules, and regulations.

26 "Adverse material fact" means a fact that should be recognized by a broker as being of enough
27 significance as to affect a person's decision to enter into a contract to buy or sell real property and may
28 be a fact that materially affects the value or structural integrity or presents a documented health risk to
29 occupants of the property. The term may not include the fact that an occupant of the property has or has
30 had ~~AIDS or another~~ A communicable disease or that the property was the site of a suicide or felony."

(c) Buyer agent disclosure to the buyer: "(Name of buyer agent) will be representing you as your agent or subagent in the purchase of real property of the nature described in the buyer broker agreement. Your buyer agent is obligated to you as enumerated below. If your buyer agent is also representing a seller of property that you become interested in, a dual agency may be created. In a dual agency relationship, the buyer agent is obligated to the seller in the same way as to you. This conflict will prohibit the buyer agent from advocating exclusively on your behalf or on the seller's behalf and may limit the level of representation you receive. If the potential for a dual agency arises, the buyer agent shall provide you with a dual agent disclosure. A buyer agent cannot act as a dual agent without your consent and that of the seller. This consent is given by you and the seller signing the dual agent disclosure. If you or the seller declines to give this consent, your opportunity to acquire the seller's property may be lost.

Your buyer agent is obligated to you as follows:

(1) to act solely in the best interests of the buyer to the exclusion of all other interests, including those of the buyer agent;

(2) to obey promptly and efficiently all lawful instructions of the buyer;

(3) to disclose to the buyer all relevant and material information that concerns the real estate transaction and that is known by the buyer agent and not known by the buyer, unless the information is subject to confidentiality arising from a prior or existing agency relationship;

(4) to safeguard the buyer's confidences;

(5) to exercise reasonable skill, care, and diligence in pursuing the buyer's objectives as established in the buyer broker agreement;

(6) to fully account to the buyer for all funds or property of the buyer coming into the buyer agent's possession;

(7) to comply with all applicable federal and state laws, rules, and regulations; and

(8) to carry out the terms of the buyer broker agreement."

(d) Buyer agent disclosure to the seller: "(Name of buyer agent) is representing the buyer with respect to the seller's property located at (address of property). Although the buyer agent is primarily obligated to the buyer, the buyer agent is obligated to you as specified below.

A buyer agent is obligated to a seller as follows:

(i) to disclose to a seller any adverse material facts that concern the ~~property~~ ABILITY OF THE BUYER TO PERFORM ON ANY PURCHASE OFFER and that are known to the buyer agent;

125

1 (ii) to deal in good faith with the seller; and

2 (iii) to comply with all applicable federal and state laws, rules, and regulations.

3 "Adverse material fact" means a fact that should be recognized by a broker as being of enough
4 significance as to affect a person's decision to enter into a contract to buy or sell real property and may
5 be a fact that materially affects the buyer's ability or intent to perform the buyer's obligations under a
6 proposed or existing contract."

7 (e) Statutory ~~agent~~ BROKER disclosure to the buyer and seller: "(Name of statutory broker) will
8 be involved as a statutory broker with respect to the purchase and sale of real property located at
9 (address). A statutory broker is not the agent of the buyer or seller but is only assisting the parties in
10 executing a sale of the property. A statutory broker is obligated to the buyer and seller as specified below.

11 A statutory broker is obligated to the parties as follows:

12 (1) to disclose to a buyer any adverse material fact that concerns the property and that is known
13 to the statutory broker and not known to the buyer. However, the statutory broker is not required to
14 conduct an independent inspection of the property or to verify any representation made by the seller.

15 (2) to disclose to the seller any adverse material fact that concerns the buyer's intent or ability to
16 perform on the purchase offer and that is known to the statutory broker and not known to the seller;

17 (3) to exercise reasonable skill, care, and diligence in facilitating the purchase and sale of the
18 property; and

19 (4) to comply with all applicable federal and state laws, rules, and regulations.

20 "Adverse material fact" means a fact that should be recognized by a broker as being of enough
21 significance as to affect a person's decision to enter into a contract to buy or sell real property. It may be
22 a fact that materially affects the value or structural integrity or presents a documented health risk to
23 occupants of the property, but may not include the fact that an occupant of the property has or has had
24 ~~AIDS or another~~ A communicable disease or that the property was the site of a suicide or felony, or it may
25 be a fact that materially affects the buyer's ability or intent to perform the buyer's obligations under a
26 proposed or existing contract."

27 (f) Dual agent disclosure to the buyer and seller: "(Name of dual agent) is the agent of the buyer
28 interested in purchasing the property and of the seller of the property located at (address of property). A
29 dual agent is obligated to the buyer and seller as follows:

30 (1) to act solely in the best interests of the buyer and seller to the exclusion of all other interests

1 including the dual agent's;

2 (2) to obey promptly and efficiently all lawful instructions of the buyer and seller;

3 (3) to disclose to the buyer and seller all relevant and material information that concerns the real
4 estate transaction and that is known by the dual agent and not known by the buyer or seller, unless the
5 information is subject to confidentiality arising from a prior or existing agency relationship;

6 (4) to exercise reasonable skill, care, and diligence in pursuing the buyer's and seller's objectives
7 as established in the listing agreement and buyer broker agreement;

8 (5) to fully account to the buyer and seller for all funds or property of the buyer AND SELLER
9 coming into the dual agent's possession;

10 (6) to comply with all applicable federal and state laws, rules, and regulations;

11 (7) to carry out the terms of the buyer broker agreement; and

12 (8) to safeguard the buyer's and seller's confidences, ~~except that~~ SUBJECT TO the obligation to
13 disclose relevant and material information concerning the real estate transaction to either the buyer or the
14 seller supersedes any confidentiality requirement. ~~However, the~~ TO A BUYER OR A SELLER ANY ADVERSE
15 MATERIAL FACTS THAT ARE KNOWN TO THE DUAL AGENT, REGARDLESS OF ANY CONFIDENTIALITY
16 CONSIDERATIONS. THE following may not be disclosed without the written consent of the party to whom
17 the information is confidential:

18 (a) that the buyer is willing to pay more than the buyer has offered for the property;

19 (b) that the seller is willing to accept less than the asking price for the property;

20 (c) factors motivating the buyer to buy or the seller to sell; and

21 (d) any other information that a party specifically indicates in writing to the dual agent is to be kept
22 confidential and that is not ~~relevant and material information concerning the real estate transaction~~ AN
23 ADVERSE MATERIAL FACT.

24 "Adverse material fact" means a fact that should be recognized by a broker as being of enough
25 significance as to affect a person's decision to enter into a contract to buy or sell real property. It may be
26 a fact that materially affects the value or structural integrity or presents a documented health risk to
27 occupants of the property, but may not include the fact that an occupant of the property has or has had
28 ~~AIDS or another~~ A communicable disease or that the property was the site of a suicide or felony, or it may
29 be a fact that materially affects the buyer's ability or intent to perform the buyer's obligations under a
30 proposed or existing contract.

1 Upon signing this disclosure form, the buyer and seller acknowledge that they understand the
2 obligations owed by a dual agent to them and consent to the dual agent representing them as a dual
3 agent."

4 (7) A written disclosure that complies with the provisions of this section must be construed as a
5 sufficient disclosure of the relationship between a broker or salesperson and a buyer or seller and must be
6 construed as conclusively establishing the obligations owed by a broker or salesperson to a buyer or seller
7 in a real estate transaction.

8
9 **NEW SECTION. Section 5. Vicarious liability.** (1) A party to a real estate transaction is not liable
10 for a misrepresentation made by the party's agent or subagent unless:

11 (a) the party has actual knowledge of the misrepresentation; or

12 (b) the agent or subagent is repeating a misrepresentation made by the party.

13 (2) A broker is not liable for a misrepresentation made by the broker's broker associate or subagent
14 unless:

15 (a) the broker has actual knowledge of the misrepresentation;

16 (b) a broker associate making the misrepresentation is an employee of the broker and not an
17 independent contractor or subagent; or

18 (c) a broker associate or subagent is repeating a misrepresentation made by the broker.

19 (3) An agent is not liable for a misrepresentation made by the principal unless the agent has
20 ACTUAL knowledge of the misrepresentation.

21
22 **NEW SECTION. Section 6. Name change -- directions to code commissioner.** In Title 37, chapter
23 51, or in material enacted by the 54th legislature that is to be codified in Title 37, chapter 51, wherever
24 the name "salesman" appears, the code commissioner is directed to change the name to "salesperson".
25

26 **NEW SECTION. Section 7. Codification instruction.** [Sections 3 through 5] are intended to be
27 codified as an integral part of Title 37, chapter 51, part 3, and the provisions of Title 37, chapter 51, part
28 3, apply to [sections 3 through 5].

29 -END-